

1-17-1992

Watershed and Forest Practices. State and Local Government

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Office of the Secretary of State
March Fong Eu

1230 J. Street
Sacramento, California 95814

ELECTIONS DIVISION
(916) 445-0820

For Hearing and Speech Impaired
Only:
(800) 833-8683

June 25, 1992

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND PROPONENTS
(92179)
FROM: Cathy Mitchell
CATHY MITCHELL
Initiative Coordinator

Pursuant to Elections Code section 3520(b), you are hereby notified that the total number of signatures to the hereinafter named proposed INITIATIVE STATUTE filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has failed. If you have any questions, please contact Cathy Mitchell in our office.

TITLE: WATERSHED AND FOREST PRACTICES. STATE AND
LOCAL GOVERNMENT.
INITIATIVE STATUTE.

SUMMARY DATE: January 17, 1992

PROPONENTS: Glen H. Spain
Cecelia A. Lanman
Gary Ball

CM/cm





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#564

January 17, 1992

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (92017)

Pursuant to Section 3513 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**WATERSHED AND FOREST PRACTICES. STATE AND LOCAL GOVERNMENT.
INITIATIVE STATUTE.**

Circulating and Filing Schedule

1. Minimum number of signatures required 384,974
Cal. Const., Art. II, Sec. 8(b).
2. Official Summary Date Friday, 01/17/92
Elec. C., Sec. 3513.
3. Petition Sections:
 - a. First day Proponent can circulate Sections for
signatures Friday, 01/17/92
Elec. C., Sec. 3513.
 - b. Last day Proponent can circulate and file with
the county. All sections are to be filed at
the same time within each
county Monday, 06/15/92
Elec. C., Secs. 3513, 3520(a)
 - c. Last day for county to determine total number of
signatures affixed to petition and to transmit total
to the Secretary of State Thursday, 06/25/92

(If the Proponents file the petition with the county on a date prior to 06/15/92, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 3520(b).



**WATERSHED AND FOREST PRACTICES.
STATE AND LOCAL GOVERNMENT.
INITIATIVE STATUTE.
January 17, 1992
Page 2**

- d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties Saturday, 07/04/92*
- e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Friday, 08/14/92
- (If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 06/25/92, the last day is no later than the thirtieth day after the county's receipt of notification.)
Elec. C., Sec. 3520(d), (e).
- f. If the signature count is more than 423,472 or less than 365,726, then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 365,726 and 423,472 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures Monday, 08/24/92*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Wednesday, 10/07/92
- (If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 08/14/92, the last day is no later than the thirtieth working day after county's receipt of notification.)
Elec. C., Sec. 3521(b), (c).
- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient Sunday, 10/11/92

* Date varies based on receipt of county certification.

WATERSHED AND FOREST PRACTICES.
STATE AND LOCAL GOVERNMENT.
INITIATIVE STATUTE.
January 17, 1992
Page 3

4. The Proponents of the above-named measure are:

Glen H. Spain
P.O. Box 205
Comptche, CA 95427
(707) 937-2324

Cecelia A. Lanman
5598 Briceland Road
Redway, CA 95560

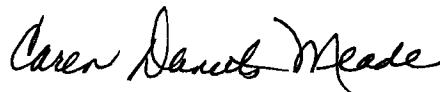
Gary Ball
4901 Mill Creek
Talmage, CA 95481

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 29770; Bilofsky v. Deukmejian (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 41, 41.5, 44, 3501, 3507, 3508, 3517, and 3519 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 3, 1992
GENERAL ELECTION: This Initiative must be certified for the ballot 131 days before the
election (June 25, 1992). Please remember to time your submissions accordingly.**

Sincerely,



CAREN DANIELS-MEADE
CHIEF, ELECTIONS DIVISION

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

(916) 324-5464

January 17, 1992

Honorable March Fong Eu
Secretary of State
1230 J Street
Sacramento, CA 95814

FILED
in the office of the Secretary of State
of the State of California
JAN 17 1992
MARCH FONG EU, Secretary of State
By CB Mitchell Deputy

RE: Initiative Title and Summary
Subject: WATERSHED AND FOREST PRACTICES. STATE AND
LOCAL GOVERNMENT. INITIATIVE STATUTE.
Our File No. SA 91 RF 0020

Dear Mrs. Eu:

Pursuant to the provisions of sections 3503 and 3513 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and addresses of the proponents is as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN
Attorney General

Mary Whitcomb
MARY WHITCOMB
Initiative Coordinator

MW:lgc
Encls.

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

(916) 324-5464

January 17, 1992

GLEN H. SPAIN, ESQ.
P.O. Box 205
Comptche, CA 95427

GARY BALL
4901 Mill Creek
Talmage, CA 95481

CECELIA LANMAN
5598 Briceland Rd.
Redway, CA 95560

RE: Initiative Title and Summary
Subject: WATERSHED AND FOREST PRACTICES. STATE AND
LOCAL GOVERNMENT. INITIATIVE STATUTE.
Our File No. SA 91 RF 0020

Dear Proponents:

Pursuant to your request, we have prepared the attached title and summary of the chief purposes and points of the above-identified proposed initiative. A copy of our letter to the Secretary of State, as required by Elections Code sections 3503 and 3513, our declaration of mailing, and the text of your proposal that was considered is attached.

The Secretary of State will be sending you shortly a copy of the circulating and filing schedule for your proposal that will be issued by that office.

Please send us a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file in this matter.

Sincerely,

DANIEL E. LUNGREN
Attorney General


MARY WHITCOMB
Initiative Coordinator

MW:lgc
Encls.

January 17, 1992
File No. SA 91 RF 0020

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

WATERSHED AND FOREST PRACTICES. STATE AND LOCAL GOVERNMENT. INITIATIVE STATUTE. Prohibits timber harvesting and other projects near waterways without permits. Limits timber harvesting in "ancient forests" and watershed areas. Prohibits harvesting more than 60% of timber volume in an area within 15-year period. Prohibits total volume of timber harvested from exceeding total volume of timber grown. Requires equivalent-sized oak trees planted for every oak removed. Requires every city and county to adopt tree planting ordinance and designate watershed and endangered habitat areas within which any project would require state government's permission. Imposes permit fees and increases timber yield tax. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: (1) Short-term impact on State: net administrative costs of approximately \$20 million annually in first few years and \$10 million annually thereafter; general tax revenue losses of millions or tens of millions of dollars annually from timber harvest and development restrictions; up to \$1 million annual revenue losses from reduced state timber sales; and, potential annual savings of millions of dollars from reduced educational spending. (2) Short-term impact on local government: one-time administrative costs probably in excess of \$10 million with ongoing annual costs of millions of dollars for increased planning responsibilities; general tax revenue losses in millions or tens of millions of dollars annually from timber harvest and development restrictions; and increased timber yield tax revenues potentially in the millions of dollars. (3) The long-term impact on state and local governments is unknown.

AMENDMENT # 3
SA91RF0020

Law Office of Glen H. Spain
Counselor and Attorney at Law

Phone 937-2324
Area Code 707

P.O. Box 205
Comptche, CA 95427

November 29, 1991

OFFICE OF THE ATTORNEY GENERAL
Attn: Mary Whitcomb, Initiatives
1515 "K" Street, Suite 511
SACRAMENTO, CA 95814

RE: Amendments to Initiative no. SA-91-RF-0020
Our title: "River, Oak & Wildlife Protection Act of 1992"

Dear Ms. Whitcomb:

Enclosed is a redrafted and amended version of the above proposed initiative measure. It is complete with all amendments included to date.

Also, for your reference, are copies of the three pages in which amendments appear indicating by bold face and/or underline which changes have been made. These pages are superseded by the official text.

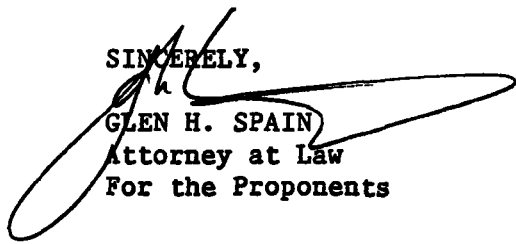
Certification by the proponents is also attached to this letter. Please finalize the official title and summary as soon as possible. Our suggested wording for the title and summary date October 21, 1991, are still an accurate reflection of the key points of the measure -- these amendments have no impact on that summary.

Thank you for your help. Please convey this amended version to Carol Daniels and Carol Bingham of the Legislative Analyst's Office as soon as possible. I have already notified them of the changes.

If there are any problems please contact me immediately. Thanks for your help.

GHS/lt
Enc.
Cc: Gary Ball
Cecelia A. Lanman

SINCERELY,


GLEN H. SPAIN
Attorney at Law
For the Proponents

RECEIVED
DEC 02 1991

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

AMENDMENT # 3
SA91RF0020

RECEIVED
DEC 0 2 1991

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

R I V E R , O A K & W I L D L I F E P R O T E C T I O N
A C T O F 1 9 9 2

FILED NOVEMBER 29, 1991

THE RIVER, OAK AND WILDLIFE PROTECTION ACT OF 1992

The People of California by Initiative Do Hereby Enact As Follows:

Section One. Title. This Initiative shall be known and may be cited as the River, Oak and Wildlife Protection Act of 1992.

Section Two. Findings and Declarations. The People of the State of California hereby find and declare as follows:

Water is essential to life. Therefore, it is the duty of government to protect and preserve our precious water resources.

Ancient forests, of which only an estimated five (5%) percent now remain, are among the most precious of the biological resources of this state. These ancient forests help protect the source of many rivers and streams, and help provide the biological diversity essential to the long term health and maintenance of a high quality environment for future Californians.

The lands bordering natural streams and rivers, known as riparian zones, are also among the state's richest biological treasures. Riparian vegetation regulates water temperature, helps prevent erosion, and provides food and habitat necessary for fish. Fish keep rivers clear of algae, control mosquitoes, and provide food, recreation and income for many Californians.

Native oak woodlands are another precious biological resource. Oak trees and vegetation related to oaks conserve water and are naturally drought resistant. Oak woodlands also guard against soil erosion and provide breeding habitat for over 100 species of birds and many other plants and animals.

All these vital habitat areas are now fast disappearing or becoming damaged and fragmented from overuse or poor planning. This jeopardizes both the amount and quality of water in this state, and makes our precious watershed habitat more susceptible to damage by drought, disease or fire.

Ancient forests and oak woodlands are also important protections against global warming, and help reduce carbon dioxide gases in the atmosphere which contribute to the greenhouse effect. Planting trees in urban riparian zones will also benefit urban areas through increased shade and scenic beauty, as well as reducing the effects of global warming.

The People hereby declare that strong and immediate protections against destruction of our few remaining ancient forests, our stream and river habitat and our oak woodlands are urgently needed. The accelerating extinction of species in those areas must be halted. Once a species is extinct its potential value to Humanity is lost forever.

Section Three. Intent of this Act. The People intend by this Act to:

(a) Enact strong and immediate protections to prevent the further loss of our last remaining ancient forests, oak woodlands and riparian habitat, and to restore and ensure long term protection of our damaged watersheds for future generations.

(b) Preserve natural open spaces and enhance recreational use of those spaces.

(c) Provide for local solutions to these problems in order to allow local people to address the unique needs of their own communities.

(d) Without imposing additional taxes on the citizens of this state, provide funds for protection and restoration of rivers, oak woodlands, forests and wildlife, and to ease the economic transition to sustained forestry in counties now dependent on the timber industry.

TITLE ONE: RIPARIAN AND WATERSHED PROTECTIONS

A. Riparian Protection Zones

Section Four. Division 10.5 is hereby added to the Public Resources Code to read as follows:

Chapter 1. General Provisions

Section 11000. Intent and State Policy. It is the intent of this division, and it shall henceforth be state policy, to protect and preserve riparian habitat for future generations to enjoy, and to diligently protect the fragile ecological balance within riparian habitat upon which all life in this state depends. This division shall be the framework upon which those protections are built. However, nothing in this division shall prevent the Legislature or any state or local agency from providing additional or more stringent protections for fragile riparian zones than are provided herein. Nothing in this division is intended to limit the public's right of access to aquatic or riparian areas for purely recreational uses which do not have significant adverse impacts upon riparian habitat and wildlife.

Section 11001. Definitions Used in this Chapter. As used in this division, the following terms shall have these meanings:

- (a) "Aquatic" means growing or living in or frequenting water.
- (b) "Community" means an association of living organisms having a mutual relationship among themselves and to their environment, thus functioning as an ecological unit in its natural state.
- (c) "Department" means the California Department of Fish and Game.
- (d) "Ecosystem" means the interacting community and its environment functioning as an ecological unit in nature.
- (e) "Environment" means the complex of factors that acts upon an organism or an ecological community and ultimately determines its form and survival.
- (f) "Habitat" means the ecological and/or physical place determined and bounded by the needs and the presence of a specific plant or animal population, which contains a particular combination of environmental conditions sufficient for that population's survival.
- (g) "Population" means a group of individuals of the same species inhabiting a specific zone or ecosystem.

(h) "Project" means as defined by the California Environmental Quality Act, section 21065 of the Public Resources Code.

(i) "Regional Board" means the appropriate Regional Water Quality Control Board.

(j) "Riparian" means pertaining to the banks and other adjacent terrestrial (as opposed to aquatic) surroundings of freshwater bodies, rivers, streams, watercourses, estuaries, and surface-emergent aquifers (springs, seeps, oases), whose transported fresh waters provide soil moisture sufficiently in excess of that otherwise available through local precipitation to support the growth of hydric or mesic vegetation.

(k) "Riparian Protection Zone" means a zone of at least 200 feet (or more as determined by the Department pursuant to section 11014) from any natural watercourse in the inland waters of this state, whether or not a perennial flow, beginning at the bank or stream transition zone nearest the boundary being measured.

(l) "Significant effect on the environment" means as defined under the California Environmental Quality Act, section 21068 of the Public Resources Code.

(m) "State Board" means the State Water Resources Control Board.

(n) "Watercourse" means any river, stream or other natural water-bearing channel with distinguishable bed and bank showing evidence of having contained flowing water as indicated by deposits of rock, sand, gravel or soil.

(o) "Zone" means an area surrounded by boundary lines; a region or area set off as distinct from surrounding or adjoining parts.

Chapter 2. Protections and Restrictions.

Section 11010. No Projects Within Riparian Protection Zones Without Permit. Within a riparian protection zone, after January 1, 1994, no project, grazing of livestock or conversion of riparian habitat to other uses shall be allowed without a permit from the Department, unless specifically exempted from this permit requirement pursuant to section 11015 below.

Section 11011. Site Inspection for Permit. The Department and the Regional Board shall inspect the site of any project or other activity for which a permit application has been submitted under this division, to determine the likely effects of the proposed project or activity on the riparian ecosystem and upon water quality. Among other factors, the potential for significant effects on the environment from erosion, increased turbidity, changes in water temperature, harm to officially listed (under either state or federal listings) endangered, threatened, rare or candidate species and their habitat, and effects on fisheries, fish spawning and rearing grounds shall be considered. A report of findings shall be made in writing. A copy shall be given to the applicant and the report shall be a public record. Where both the Regional Board and State Board have jurisdiction over a project or activity which is also subject to this division, the State Board may delegate its authority to the Regional Board for purposes of any of the inspections or acts required under this division. In instances where statutory law or regulations may require site inspections by both the Regional Board and State Board, the Regional Board may, at its option, accept the site inspection report of the State Board in lieu of its own site inspection report otherwise required under this section.

Section 11012. Mitigations and Set-Asides Required. The Department, in consultation with the Regional Board, may require conditions to be met or mitigations to be made which the Department determines are reasonably required to prevent, compensate for or mitigate any significant effect on the environment which might otherwise result from the proposed project or activity. The Department may also require appropriate set-asides, dedications, conservation or open space easements (pursuant to either Civil Code 815 through 816 or Government Code 51070 et. seq. or other provisions of law) as it deems necessary to accomplish the purposes of this division, and may also require monitoring in order to ascertain compliance. Conservation of lands within riparian protection zones solely for open space riparian habitat shall be deemed the highest and best use of such lands.

Section 11013. Basis of Determinations. Any agency determination made under this division shall be based on the best scientific evidence and methodology available, and the likelihood and scope of potential environmental damage, including additions to cumulative impacts. The findings of the agency upon which a determination is made shall be in writing and shall be public records.

Section 11014. Width of Riparian Protection Zones. No riparian protection zone shall be less than 200 feet from the stream transition zone or bank, on each side of the watercourse. The Department may establish wider riparian protection zones for specific watercourses, or for specific sections of a watercourse, if it determines that a wider protection zone is reasonably necessary to maintain the biological and ecological health of the riparian ecosystem, to offset prior environmental degradation, or to contain the entire riparian habitat within the protection zone boundaries. This determination shall be made on the basis of site specific characteristics such as vegetation, soils and hydrology, as well as based upon best available scientific evidence. Any person may, pursuant to rules established by the Department, petition the Department to expand or modify the width of the riparian protection zones in specific instances. However, nothing in this division shall authorize the setting of riparian protection zones of less width than 200 feet on each side of the watercourse.

Section 11015. Exemptions. This division is not intended to apply in the following circumstances:

(a) To artificial structures and equipment required to divert water for irrigation purposes or for watering livestock pursuant either to a riparian right or a water appropriation permit granted by the State Board.

(b) To artificially constructed irrigation trenches, ditches or other pipes or water corridors used for agricultural purposes.

(c) To boat landings for recreational purposes.

(d) To fire suppression or other emergency activities to protect lives or property.

(e) To stream or river restoration projects which have been reviewed and approved by the Department, or are conducted by or pursuant to a contract with the Department or another state agency.

(f) To the maintenance of existing public roads and bridges.

(g) To activities conducted pursuant to the Z'Berg-Nejedly Forest Practice Act (Public Resources Code 4511 et. seq.).

Section 11016. Special Rules for Control of Overgrazing. It is not the intent of this division to place unreasonable restrictions on the grazing of livestock. However, overgrazing of livestock in riparian areas does pose a significant threat to those fragile ecosystems. Therefore, the Department shall make reasonable regulations pursuant to section 11033 for the control of overgrazing in or near riparian protection zones. The Department shall also help provide technical assistance to ranchers whose livestock may adversely affect designated riparian protection zones, so as to aid them in mitigating any adverse impacts, and may also establish a program to provide a portion of the costs of fencing off riparian protection zones from livestock in areas where overgrazing is likely to occur.

Section 11017. Arbitration of Disputes. Any project proponent who objects to mitigations or conditions proposed for the project may elect to arbitrate the matter pursuant to procedures established by the Department. The decision of the arbitration panel must be based on the standards for determinations contained in section 11013 and the records and evidence presented in the case. Mere additional cost to the project proponent of mitigations shall not in itself be grounds for modification of the Department's proposed mitigations or requirements.

Chapter 3. Mapping and Study.

Section 11020. Statewide Mapping and Study. The Department, in consultation with other departments of the Resources Agency and with county and local agencies, shall classify and map riparian habitat by type throughout the state, shall assess their ecological health, and shall undertake a study to determine those riparian habitat areas and ecosystems most damaged or threatened by the cumulative impacts of human activities, as well as those least damaged, for the purpose of baseline comparison. That study shall also identify measures to be taken to provide for the long range health, restoration and stability of riparian ecosystems generally throughout this state, including recommendations for preserving riparian baseline study areas intact in their natural form. By January 1, 1995,

the Department shall report its findings to the Governor and the Legislature, with recommendations for additional protective legislation to protect and restore the biological integrity of riparian habitat, as well as to expand protected areas. The Department shall similarly publish updated reports every three years thereafter.

Chapter 4. Regulations and Permit Fees.

Section 11030. Department to be Lead Agency. For purposes of the implementation of this division and its enforcement, the Department shall be the lead agency. However, authorized agents and employees of both the Department and the Regional Boards shall have authority to make on-site inspections, take samples or photographs, monitor compliance, conduct studies and otherwise to enter lands within the riparian zones of this state, upon reasonable notice to the property owner, for any purpose related to their duties and enforcement powers under this division.

Section 11031. CEQA Not Affected. Nothing in this division is intended to limit the application of the California Environmental Quality Act (commencing section 21000 of this code), the California Endangered Species Act (commencing at section 2050 of the Fish and Game Code) or any other provision of law intended to protect the natural environment and the plants and animals therein. The remedies in this division are intended to be in addition to any other remedies at law which may be applied for the protection of natural habitat.

Section 11032. Permit Fees. The Department and the Regional Boards are authorized to establish application permit and inspection fees, commensurate with the size of proposed projects and activities regulated under this division, sufficient to defray their actual costs of implementation and enforcement under this program, including (but not limited to) costs incurred for consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California

Environmental Quality Act (commencing with section 21000 of this code), consulting pursuant to section 21104.2 of this code, and for other activities pursuant to this division. Fees charged by the Department pursuant to this division shall not exceed amounts authorized pursuant to section 711.4 of the Fish and Game Code, but may be in addition to fees authorized under other provisions of law or for other activities.

Section 11033. Rule-making Authority. The Department shall make rules and regulations as necessary to implement the intent of this division.

Chapter 5. Enforcement.

Section 11040. Action to Enjoin Violation.

(a) Any person may bring an action to enjoin the violation, or threatened violation, of any provision of this division, or the rules and regulations adopted pursuant to this division, or to seek imposition of a civil penalty in accordance with section 11042. Any proceedings seeking injunctive relief shall be in accordance with the provisions of Chapter 3 (commencing with section 525) of Title 7 of Part 2 of the Code of Civil Procedure. If in such a proceeding it appears from facts shown by affidavit or verified complaint that a violation has occurred or is threatened, the court shall issue a temporary restraining order requiring the immediate discontinuance of any activities in which such violation has occurred or is threatened, pending a hearing on the matter.

Upon a finding that immediate and irreparable harm is threatened to soil, wildlife, vegetation or water resources within riparian or aquatic habitat by virtue of that activity, the court may order the defendant or defendants to take appropriate emergency corrective action, authorize the Department to order the defendant to take such action, or authorize the Department to take emergency action to correct a violation of this division. Any expenses incurred by the Department in taking action in conformity with such order shall be chargeable as a lien against the person or persons conducting such activity, and shall become a lien on the real or personal property of such persons.

(b) For purposes of this section, the definition of "person" is expanded to include the Attorney General in the name of the People of the State of California, any district attorney, county counsel, city attorney, city prosecutor, or state or local water agency.

(c) If a public official brings an action pursuant to this section, then any person shall be permitted to intervene on such terms as the court finds appropriate.

(d) Notwithstanding any other provision of law, particularly section 529 of the Code of Civil Procedure, no plaintiff in an action under this section shall be compelled to post more than a nominal bond as a condition of obtaining injunctive relief.

Section 11041. Writ of Mandate. Any person may commence an action for a writ of mandate against any government agency charged with responsibilities pursuant to this division. Such a writ of mandate shall be brought pursuant to Chapter 2 (commencing with section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, to compel the agency to carry out any duty imposed upon it under the provisions of this division. Notwithstanding any other provision of law, particularly section 529 of the Code of Civil Procedure, the plaintiff in such an action shall not be compelled to post more than a nominal bond as a condition of obtaining injunctive relief. Notwithstanding any other provision of law, any person shall have standing to intervene in support of all or any portion of this division, or its application, in any judicial proceedings in which this division or any portion, or the application thereof, is challenged on constitutional grounds. However, notwithstanding any other provision of law, no such intervening party shall be subject to liability for any attorney's fees or costs awarded to any prevailing party in such action.

Section 11042. Civil Penalty.

In addition to any other penalties provided by law, any person who conducts, orders or directs activities in willful violation of any provision of this division shall be subject to a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day of

violation. In assessing the amount of the penalty, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of environmental harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation has occurred, and the corrective action, if any, taken by the violator. Penalties levied under this section shall be deposited into a special account in the Fish and Game Preservation Fund, and shall be used by the Department to fund the study, restoration and replanting of riparian habitat throughout the state, and to reimburse itself for the costs of enforcing this division.

Section 11043. Misdemeanor Penalty. Any person who willfully resists, delays or obstructs any person or agency charged with the responsibility under this division to inspect, take samples, survey, or inventory land or wildlife is guilty of a misdemeanor, and shall be punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment in county jail for not more than six months, or by both such fine and imprisonment. In the event of a continuing violation, each day during which the violation continues shall constitute a separate violation.

Section 11044. Attorneys Fees and Costs. Upon motion, a court shall award attorney's fees and reasonable litigation expenses to a prevailing party in any action brought pursuant to section 11040, 11041 or 11042, if such party meets the requirements of section 1021.5 of the Code of Civil Procedure. However, nothing in this division shall be construed as limiting the court's inherent power to order a party, the party's attorney, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions, or tactics that are frivolous or solely intended to cause unnecessary delay, pursuant to Code of Civil Procedure section 128.5.

B. Other Watershed Protections

Section Five. Section 4564.2 is hereby added to the Public Resources Code to read as follows:

Section 4564.2. Watershed Mapping & Harvesting Intensity.

Within one year of the effective date of this Act, the Board of Forestry with the concurrence of the State Water Resources Control Board and the Department of Fish and Game shall adopt new regulations for the purpose of reducing the cumulative adverse impacts of timber operations within watershed areas. The regulations shall:

(1) Identify, by map or description, all watershed areas in the timberlands of the state. For the purpose of this section, "watershed area" shall mean the land base and associated watershed system which drains into a Class I watercourse, provided that no watershed area shall be in excess of 5,000 acres. Where more than 5,000 acres drains into the same Class I watercourse, the Class I watercourse shall be divided into logical and sequential segments which provide drainage of not more than 5,000 acres.

(2) Include a schedule which limits the intensity of timber operations, such that a greater percentage of a watershed area may be harvested where the intensity of timber operations is lower, and a lesser percentage may be harvested where the intensity of timber operations is higher. In calculating the intensity of timber operations, the board shall consider such factors as the average percentage of basal area harvested per acre, yarding and skidding techniques, and slope and erosion hazard rating.

(3) Provide that not more than fifteen (15%) percent of a watershed area may be logged, within any ten (10) year period, using harvesting methods that result in removal of more than fifty (50%) percent of the average basal area of commercial species. "Basal area" as used herein shall only include trees of eight (8") inches in diameter or more.

Section Six. Section 4564.3 is hereby added to the Public Resource Code, to read as follows:

Section 4564.3. Watercourse Protection Zone. Timber operations shall comply with the following requirements:

(a) For the purposes of this section, any area within 150 horizontal feet of the bank or stream transition line of any Class I or Class II watercourse, or within 75 horizontal feet of any Class III watercourse shall be known as a "watercourse protection zone" or WPZ. Except as necessary to construct an approved watercourse crossing, no trees may be harvested from a watercourse protection zone. The board shall establish distance/slope tables translating these restrictions into measurements on slopes by slope classification.

(b) No tractors or other soil-disturbing equipment may be used in a watercourse protection zone, except upon existing roads, to construct an approved watercourse crossing or for a restoration project approved by the Department of Fish and Game. Where a logging road exists within a watercourse protection zone, tree and vegetation removal is prohibited within the zone on either side of the road.

(c) During timber operations, neither trees felled into a Class I or Class II Watercourse by accident or incidental to the construction of an approved watercourse crossing, nor any coarse woody debris or downed trees which were present in such a watercourse prior to the commencement of timber operations, may be removed, except as approved by the Department of Fish and Game. Trees harvested from an area less than 100 feet from a watercourse protection zone shall be felled away from that zone.

(d) No landings may be constructed or reconstructed in, and no logs may be yarded into, any watercourse protection zone.

(e) Timber operations shall not directly or indirectly result in the discharge into a watercourse of soil, silt, bark, slash, or earthen material in amounts deleterious to the beneficial uses of water, or to fish or wildlife, or in violation of the water quality objectives contained in

the applicable Water Quality Control Plan. All soil and debris incidentally discharged into a watercourse as a result of timber operations shall, to the extent feasible, be removed by the timber operator by October 1 of each year in which timber operations occur.

(f) No timber operations shall occur and no equipment shall be used or placed within 50 feet of the periphery of any seep or spring, except that where a spring fed domestic water system is present in the area subject to a plan, no timber operations shall occur within 200 feet of such system's source, and the plan must set forth a description of the methods to be utilized to protect the system, including its source and pipelines. No such plan shall be approved by the department without the approval of the Regional Water Quality Control Board of these mitigation measures and their adoption into the plan.

(g) The width of a watercourse protection zone in any particular watercourse shall be appropriately increased, if either of the following occurs:

- (1) The Regional Water Quality Control Board determines that such an increase is necessary to protect water quality or the beneficial uses of water; or
- (2) The Department of Fish and Game determines that such an increase is necessary to protect fish or wildlife habitat, or to provide adequate wildlife corridors.

The Board of Forestry shall also develop rules, with the concurrence of the Department of Fish and Game, providing for appropriate buffer zones adjacent to watercourse protection zones in which only limited harvesting or harvesting by selection may be done, based on such factors as slope, erosion potential and other site specific factors.

(h) The Board of Forestry shall develop rules to minimize the adverse impact of approved watercourse crossings and roads on fish and riparian habitat and to reduce the erosion potential of such construction. Approved watercourse crossings shall be allowed only over stabilized surfaces, shall

not drain into streams, shall be properly culverted and outsloped pursuant to rules adopted by the board, shall be approximately perpendicular to watercourses, and shall be minimized in terms of number of crossings within any plan for harvesting of timber. The Board of Forestry shall also develop rules to upgrade pre-existing watercourse crossings and roads to comply with these standards, so as to minimize their erosion potential, and to remove and remediate pre-existing crossings which cannot reasonably be made to comply with these standards. Logging roads and skid trails within a watercourse protection zone which cannot reasonably be brought into compliance with these standards shall be promptly closed, permanently stabilized and replanted with the principal native species of the surrounding timberlands.

(i) The application of chemical herbicides for brush control or other purposes in timber operations in this state shall not be allowed, and is deemed an invalid silvicultural practice for all purposes.

(j) The Department of Fish and Game or a Regional Water Quality Control Board may require, as a condition for approval of a plan, that action be taken by the timberland owner to restore any watercourse within the plan area where past timber operations have diminished (or are likely to diminish) the beneficial use of water, or which have adversely affected (or are likely to adversely affect) fish and riparian habitat.

(k) Nothing in this section shall prohibit the board from adopting local rules pursuant to section 4516.5 which are more stringent than these standards, or which apply these standards to site specific characteristics which occur within any specific county or area.

C. Special Treatment for Degraded Watercourses

Section Seven. Section 13274 is hereby added to the Water Code to read as follows:

Section 13274. Degraded Watercourses.

(a) The state board, in consultation with the regional boards and the Department of Fish and Game, shall classify those perennial watercourses within the waters of this state which are known to have suffered significant environmental degradation reasonably attributable either to

point or non-point source pollution discharges as "degraded watercourses". Within those areas which drain into a degraded watercourse established under this section, the state board and the regional boards may prohibit or limit those activities which, after hearing, it determines are, or may be, substantial factors contributing to the environmental degradation of that watercourse, and may also make recommendations for mitigating or reducing those adverse environmental impacts for any project subject to its review.

(b) Any other provisions of law notwithstanding, the state board (or any of its regional boards) shall have and may exercise all the powers set forth in this act to remedy those conditions which result in, or may contribute to, the significant environmental degradation of a degraded watercourse.

(c) For the purposes of this section, "significant environmental degradation" includes, but is not limited to, significant loss of habitat for freshwater or anadromous fish resulting from increased stream siltation or increased average water temperature, the reduction of species diversity or the alteration of species composition within riparian or aquatic habitat ecosystems, as compared to that exhibited in that watercourse historically, or which typically would be expected under ordinary biological circumstances.

(d) The state board shall by regulation provide for a listing procedure by which state or local agencies and members of the public can petition that any watercourse of this state be classified by the state board as a degraded watercourse. Such a finding shall be based on best available scientific and historical information.

(e) For purposes of this section, any watercourse of this state listed pursuant to section 33 U.S.C. 1314(1) of the Federal Water Pollution Control Act shall be deemed a "degraded watercourse" so long as it continues to be so listed.

(f) The state board shall promulgate regulations implementing and governing the procedures established by this section.

Section Eight. Section 4564.8 is hereby added to the Public Resources Code to read as follows:

Section 4564.8. Limitations on Harvesting in Watershed Areas Draining into Degraded Watercourses. Unless site specific mitigation measures to minimize the potential for stream siltation and loss of fish spawning and rearing habitat have been approved for the plan by the Regional Water Quality Control Board and the Department of Fish and Game, no plan for the harvesting of timber shall be approved on sites which:

(a) have an erosion hazard rating above the lowest established hazard rating, and also;

(b) are situated within a watershed area draining into a watercourse classified as (or deemed to be) a "degraded watercourse" pursuant to section 13274 of the Water Code.

A monitoring program or remediation efforts may then also be required as a condition of approval of such a plan, the costs of which shall be paid by the timberland owner.

Section Nine. Section 4514.3 of the Public Resources Code is hereby repealed.

Section Ten. Section 4582.74 is hereby added to the Public Resources Code to read as follows:

Section 4582.74. Water and Other Monitoring Programs. Any agent or employee of a department within the Resources Agency or the California Environmental Protection Agency may enter private lands, after reasonable notice has been given to the landowner, in order to ascertain compliance with the terms of this chapter, take photographs, or to conduct studies (including baseline studies), surveys, or take samples using appropriate equipment, for any purpose reasonably related to the exercise of their powers and duties under this chapter. Refusal to allow such access shall be grounds for denial of a timber harvesting plan.

Section Eleven. Section 4582.10 is hereby added to the Public Resources Code to read as follows:

Section 4582.10. No Plan Approved Unless Reviewed by Department of Fish and Game and Regional Water Quality Control Board; Mitigations May Be Required. No plan for the harvesting of timber may be approved by the Department of Forestry and Fire Protection or the Board of Forestry, unless first reviewed by the Department of Fish and Game and by the appropriate Regional Water Quality Control Board, and until any mitigations suggested by those agencies are adopted into the plan. Such mitigations shall be required to be implemented as a condition of approval.

TITLE TWO: FOREST WATERSHED PROTECTION AND RESTORATION

A. Definitions

Section Twelve. Section 4528(f) of the Public Resources Code is hereby repealed.

Section Thirteen. Section 4528 of the Public Resources Code is amended to add the following subsection definitions:

(f) "Clearcutting" means the timber harvest method in which sixty percent (60%) or more of the merchantable timber volume (measured in Scribner board feet) of an area greater than two and one-half (2 1/2) acres is logged within any fifteen-year period. This definition may include those harvest methods commonly referred to as "seed tree" and "shelterwood removal" methods, among others, depending on the timber volume harvested.

(g) "Watercourse" means a river, stream, seep, spring, pond or lake, or the bed or channel of a river, stream, seep, spring, pond or lake.

(1) "Class I watercourse" means a watercourse (i) which at any time of the year provides habitat for fish; (ii) which historically provided habitat for fish; (iii) which provides habitat for dependent species; (iv) which provides a domestic water supply; (v) which is within 2,500 feet upstream of a domestic water supply intake, or (vi) which flows perennially and is within 1,000 feet upstream of fish habitat.

(2) "Class II watercourse" means a watercourse, other than a Class I watercourse, which provides freshwater habitat for aquatic species other than fish.

(3) "Class III watercourse" means a watercourse, other than a Class I or Class II watercourse, which is subject to flows capable of transporting sediment downstream to a Class I or Class II watercourse.

(h) "Beneficial uses of water" includes those uses defined by section 13050(f) of the Water Code and described in the applicable Water Quality Control Plan, as well as the restoreable uses of water for fish or wildlife, as identified by the Department of Fish and Game.

(i) "Seep" or "spring" means an area where water naturally flows or rises to the surface at any time during the year, excluding the bed of a flow of water, but including the head of a flow of water.

(j) "Endangered or threatened species" means any species which has been listed as endangered or threatened by the federal government pursuant to the provisions of the Endangered Species Act, 16 U.S.C section 1531 et. seq., or by the state government pursuant to section 2070 et. seq. of the Fish and Game Code.

(k) "Old-growth tree" means a tree with an annual rate of growth (measured in board feet) that has consistently declined from its highest level due to age-related factors or which is in excess of 175 years of age. Characteristics such as large diameter and a rounded or flat-topped crown may also be indicative, but not determinative.

(l) "Stream" means a body of water flowing in a channel. "Stream" includes flows which are not perennial or which are seasonal.

(m) "Feasible" shall mean the same as "feasible" defined in Public Resources Code 21061.1. Additional economic cost of mitigations or alternatives does not in itself create infeasibility.

(n) "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment, as defined in Public Resources Code 21068. An economic or social change by itself shall not be considered a significant effect on the environment.

(o) "Eucalyptus plantation" means a forest which contains ninety percent (90%) or more by volume of the genus Eucalyptus, and which was established before the effective date of this act.

(p) "Fiber plantation" means any area planted with trees which was not natural timberland as of 1940.

(q) "Emergency sanitation cutting" means logging of diseased or pest-infected timber necessary to control the spread of disease or insect pests to healthy trees.

(r) "Plan for the harvesting of timber" includes all individual timber harvest plans, as well as all longer-term forest resource management plans, however titled or designated.

(s) "Compatible use" means a use which is not significantly adversely affected by timber operations.

(t) "Cumulative impacts" means as defined under California Environmental Quality Act (commencing 21000 of this code) and Title 14 of the California Code of Regulations, including 14 CCR 15355, and relevant case law interpreting those sections.

(u) "Effects" means effects and impacts, including as defined in 14 CCR 15358 and relevant case law interpreting that section.

(v) "While giving consideration" means the selection of those feasible silvicultural systems, operating methods and procedures which minimize significant adverse effects on the environment and create no unreasonable adverse impacts on soil, air, fish and wildlife, water resources, range and forage resources, recreation and aesthetics.

(w) "Sustainable Forestry" means forest management practices which result in: (1) a mixed evergreen, conifer or deciduous forest which maintains a healthy natural balance, diversity and age mixture of trees and understory plants and other species native to the area; (2) a forest that perpetually provides protection, maintenance and restoration of wildlife, fish, riparian and aquatic habitat, the maintenance of soil fertility and stability, clean water and clean air, maintenance of natural ecosystem processes and natural regeneration, and local economic, aesthetic and recreational opportunities.

(x) "Maximum sustainable production" means the maximum volume of high quality sawlogs, measured in Scribner board feet per acre per year, that can be continuously produced without compromising the health of the forest ecosystem. Maximum sustainable productivity in even-aged stands occurs when the stand has reached culmination of mean annual increment (CMAI), measured in Scribner board feet. In determining maximum sustainable production, trees which have exceeded the age at which culmination of mean annual increment of growth occurs may be deemed to be at culmination of mean annual increment.

(y) "Culmination of mean annual increment (CMAI)" means the age at which a given timber species, with a natural mix of other plants, has reached its maximum rate of growth, measured in Scribner board feet, averaged over its lifetime. This is the optimum age of maximum timber production for high-quality sawlogs. CMAI will vary considerably according to growing site class, site-specific factors, site history and the type of measure used.

(z) "Industrial timberland" means any timberland that is owned or controlled by any person, other than a federal agency, who owns or controls more than 2,500 acres of timber, timberland, cutover land, or timber rights in the State of California, including rights on lands of another. For the purposes of this definition, a person "controls" timberland if, without limitation, any subsidiary of which the person owns ten percent (10%) or more, in turn owns any of the rights described in this subdivision, or if the person is in a position to determine harvest volumes or schedules.

(aa) "Logging road" means any private road used in conducting timber operations which has been constructed or reconstructed. For the purposes of this chapter, a road has been "constructed" or "reconstructed" if it has been surfaced, paved, or graded, if the drainage structures have been excavated on or near the road, or if there is evidence of substantial intentional soil disturbance. Routine grading maintenance shall not be considered to be construction or reconstruction.

(bb) "State forest" means land subject to regulation pursuant to Chapter 9 of this Division.

(cc) "Timber volume", unless otherwise specifically indicated, means the total conifer timber volume and hardwood timber volume defined as follows:

(1) "Conifer timber volume" means the volume of all conifer trees that are at least eight inches in diameter at breast height, measured in accordance with the Scribner board foot measure.

(2) "Hardwood timber volume" means the volume of all hardwood trees that are at least eight inches in diameter at breast height, measured in board feet.

(dd) "Tractor yarding" means that system of transporting logs by dragging the logs from an operator-driven self-propelled vehicle.

(ee) "Uneven-aged management" means the application of a silvicultural system which results in the removal of individual trees, or small groups of trees, from areas no larger than two and one-half (2 1/2) acres, in order to promote natural regeneration and to create stands of trees of different age classes.

(ff) "Even-aged management" means the application of a silvicultural system which results in a stand composed of trees in the same age class, or with no, or relatively small, differences of age.

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B. Sustainable Forestry Program

Section Fourteen. Section 4564.05 is hereby added to the Public Resources Code to read as follows:

Section 4564.05. Policy of Sustainable Forestry; Regulations.

(a) Within 18 months of the effective date of this Act, the Board of Forestry, in consultation with other appropriate state agencies, shall adopt regulations to implement a Sustainable Forestry Program for all private and state timberlands. After two years from the effective date of this Act, no plan for the harvesting of timber may be approved, and no timber operations may occur pursuant to any plan, unless Sustainable Forestry Rules have been adopted, and unless timber operations are conducted pursuant to those rules. Rules adopted pursuant to the Sustainable Forestry Program shall be developed and implemented based on site-specific growth rate information to the degree such information is available, allowing for species, site class and other site-specific factors, and shall provide for the collection of such information by the department for each plan and within each watershed planning unit.

(b) The Sustainable Forestry Rules may not allow a transition period of more than seven (7) years from current practices to a Sustainable Forestry Program. During that transition period, however, no plan for the harvesting of timber shall be approved which would cumulatively result in the harvesting of more than the following percentages of timber volume inventory within the following time periods: from the effective date of this section through 12/31/93, no more than 4.5% of inventory; within any 12 month period between the dates 1/1/94 to 12/31/95, no more than 4.0% of inventory; within any 12 month period between 1/1/96 and 12/31/97, no more than 3.0% of inventory; after 1/1/98, no more than the demonstrated rate of regrowth of timber in the plan area based on data collected on site. Companies that do not harvest annually may accumulate these percentages over no more than five (5) years during that transition period.

(c) The policy of the Sustainable Forestry Program shall be that in any ten-year period, on all private and state timberlands, the total volume of timber logged shall not exceed the total volume of timber grown, and the total volume of mature trees logged shall not exceed the total volume of mature trees grown, unless site-specific data clearly and convincingly demonstrate, on the basis of best available scientific evidence, that logging a greater volume would achieve maximum sustainable productivity sooner. Volume for this purpose shall be measured in Scribner board feet.

(d) After two years from the effective date of this Act, no plan for the harvesting of timber shall be approved unless it has a Sustainable Forestry plan element within it (pursuant to rules adopted by the Board of Forestry) which is intended to implement the policy of achieving Sustainable Forestry in the shortest feasible time within the plan area.

(e) Sustainable Forestry practices shall incorporate, wherever feasible, uneven-aged, mixed-species management and harvesting by selection.

(f) Site-specific timber volume and rate of growth data shall be collected for each plan by the department pursuant to this Program using the best scientific methodology, including the use of increment borings, tree-ring counts, diameter increase measurements of sampling trees, computer modeling and other appropriate techniques. Such data shall not be deemed proprietary information, although the department may reasonably restrict access to such information to authorized personnel for scientific research purposes only. Annual summations of such data shall be provided to the Board of Forestry in order for it to assess the Sustainable Forestry Program. A specific program shall also be developed for monitoring and improving the accuracy of data and projection methods used to produce estimates of inventory, growth and yield, percent area occupied by each stand age and structure class, and long term sustainability. The Board shall establish site-specific maximum allowable percentage of inventory harvesting limits, which shall not exceed the demonstrated average rate of growth for the stand for the applicable rotation period.

(g) It shall be the policy of the Board of Forestry and the department, in enforcing this chapter and the rules adopted pursuant to this chapter, that over time, averaged over each watershed area planning unit, there shall be a gradual increase in the overall board foot measure of timber volume grown, as well as a net increase in harvest rotation times, such that maximum sustainable production is reached as soon as possible, without compromising the long term health and biological vitality of those timberlands as forests. Notwithstanding any other provision of this chapter, however, the rules and regulations of the Board of Forestry pursuant to the Sustainable Forestry Program shall not provide for an average rotation age of managed even-aged stands that is less than one hundred (100) years.

(h) The Board of Forestry may provide rules for expedited review to reduce costs under this section of timber harvest plans submitted for timberlands owned or controlled by any person who owns or controls not more than 640 acres of commercial timber, timberland, cutover land, or timber rights, including rights on lands of another, so long as other provisions of law are met.

(i) The Board of Forestry may also provide for a variance from percentage of inventory harvesting limitations, for timberland owned or controlled by any person, who owns or controls not more than 640 acres of timberland, cutover land, or timber rights, including rights on lands of another, under the Sustainable Forestry Program, who will harvest no more than twenty (20%) percent of conifer timber volume and hardwood timber volume, from an area no greater than 100 acres, in any ten (10) year period, provided all the other requirements of the Sustainable Forestry Program are met.

(j) In the event the Forest and Water Protection Act of 1992 is approved by the people on June 2, 1992 and becomes law, this section is intended to provide policy guidelines and standards for the implementation of subsections 4564.1(c), 4564.1(d), 4564.1(e) and 4564.1(g), and in the implementation of rules adopted pursuant to subsection 4564.1(f) of that Act.

In the event that both this section and section 4564.1 of the Forest and Water Protection Act of 1992 are passed into law, the percentage of inventory harvesting standards of both shall apply, and in the event of any conflict between them, the lowest percentages of the two shall apply, until or unless growth related, site-specific data indicate more stringent standards should be imposed by regulation in order to implement the policy of this section, in which case those more stringent standards shall then apply. In the event the Forest and Water Protection Act of 1992 fails to be approved or become law as a result of the June 2, 1992 election, this subsection 4564.05(j) shall be self-cancelling, and shall not be codified into law with the remainder of this section.

Section Fifteen. Subsection 4593.2(d) of the Public Resources Code is hereby repealed.

Section Sixteen. Subsection 4593.2(d) is hereby added to the Public Resources Code to read as follows:

Subsection 4593.2(d) "Sustained yield" means the same as "maximum sustainable production" as defined in section 4528(x).

C. Clearcutting Prohibited

Section Seventeen. Section 4564 is hereby added to the Public Resources Code to read as follows:

Section 4564. Clearcutting Prohibited.

(a) Except as otherwise provided by this section, clearcutting is prohibited in California.

(b) This section does not apply to timber operations conducted pursuant to a timber harvesting plan approved prior to the effective date of this Act, if, prior to the effective date of this Act, substantial liabilities for timber operations have been incurred in good faith and the Board of Forestry determines that application of subdivision (a) of this section would result in unreasonable economic hardship to the owner or operator.

(c) The prohibitions on clearcutting in this section do not apply to:

- (1) The harvest of Christmas trees, Eucalyptus plantations or fiber plantations;
- (2) Emergency sanitation cutting authorized by the Board of Forestry;
- (3) Salvage of dead trees, except in ancient forests and associated forests, if approved by the Department of Fish and Game;
- (4) Lands that have been approved for conversion to uses other than growing timber pursuant to Article 9 of this chapter;
- (5) Fire breaks, fire roads, fuel breaks and rights-of-ways;
- (6) Clearing of timberland of up to 2 acres for a residential home site; or,

(d) Except as provided in subdivisions (b) and (c)(1) through (c)(6), after the completion of timber operations, not more than ten percent (10%) of the area subject to a timber harvesting plan may be in clearcuts that are greater than one-half acre in size.

D. Ancient Forests Protection

Section Eighteen. Section 4521.1 is hereby added to the Public Resources Code to read as follows:

Section 4521.1. "Ancient forest.": "Ancient forest" shall consist of twenty (20) or more contiguous acres of timberland, regardless of ownership, which meet either of the following requirements:

- (a) Twenty percent (20%) or more of the overstory canopy is comprised of the crowns of old growth trees, the canopy is multi-layered, trees are variably spaced and vary widely in age and size, and dead standing or fallen trees are present; or
- (b) Eighty percent (80%) or more of the overstory canopy is comprised of old growth trees of one species, and dead standing or fallen trees are present.

Areas comprised of less than five (5) contiguous acres within ancient forest areas which do not meet the above criteria shall be deemed part of the ancient forest area.

(b) In the context of ancient forests, "associated forest" means those lands which:

- (1) Assist in the perpetuation of the natural structure and ecological function of an ancient forest, or in the protection of an ancient forest from edge effect, windthrow, fire, flood, landslide, or other natural or man made events;
- (2) Enable species of plants or animals which are associated with, sensitive to, or wholly or in part dependent upon ancient forests to fulfill life-sustaining functions, including but not limited to hunting, migrating, reproducing, rearing offspring, dispersing, or seeking protection from predators or the elements; or
- (3) Adjoin or connect ancient forests and serve as ecological corridors (or potential corridors) to allow migrations by dependent species between ancient forests.

In identifying ancient forests and associated forests, the board shall consider the standards and comments of the Department of Fish and Game, the United States Fish and Wildlife Service and the best available scientific information. Evidence of human presence or activity shall not disqualify an area from being identified as an ancient forest.

Section Nineteen. Section 4522.2 is hereby added to the Public Resources Code to read as follows:

Section 4522.2. "Critical habitat". "Critical habitat" means habitat for a dependent species which the Department of Fish and Game determines during review of a plan, by regulation or otherwise, to be either of the following:

- (1) an area within the geographical area occupied by the species on the date of enactment of this section which is considered essential to the viability of the species, or which requires special management considerations or protection for the benefit of the species;
- (2) an area outside the geographical area occupied by the species but which is considered essential for the restoration or continued viability of the species.

Section Twenty. Section 4522.9 is hereby added to the Public Resources Code to read as follows:

Section 4522.9. "Dependent species". "Dependent species" are native species or subspecies of birds, mammals, reptiles, amphibians, fishes, insects, arthropods, plants or fungi, which are not necessarily endangered or threatened species, but which the Department of Fish and Game has determined find optimum or preferred habitat for at least part of their life cycle in ancient forests, and whose population has declined or is declining, in part or all of the state, as the result of the logging of such forests. "Dependent species" include the following species or subspecies: Pacific Fisher; Red Tree Vole; Northern Spotted Owl; California Spotted Owl; Southern Spotted Owl; Flammulated Owl; Marbled Murrelet; Northern Goshawk; Olympic Salamander; Del Norte Salamander; Tailed Frog; Pine Marten; Wolverine, and any other species or subspecies of plant or animal subsequently added to this list as meeting this definition by the Department of Fish and Game, based on the best available scientific data. Dependent species are not "game" within the meaning of the California Constitution.

Section Twenty-one. Article 5.5 is added to Chapter 8 of Part 2 of Division 4 of the Public Resources Code to read as follows:

Article 5.5 Ancient Forest Harvesting and Restoration

Section 4570. Ancient Forest Regulations. Within one year of the effective date of this Act, the Board of Forestry shall adopt rules and regulations for the purpose of identifying ancient forests and associated forests throughout the timberland of California and for regulating timber harvesting, as well as protecting critical habitat within those forests, in a manner consistent with the provisions of this article. No plan for the harvesting of timber in any timberland area which is substantially likely to fit the definitions of ancient forests or associated forests shall be approved until such rules and regulations have been adopted. The rules for identifying ancient forests shall delineate, on the basis of best available

scientific information and methodology, the structural characteristics and functional habitat requirements of ancient forest for all timber types subject to harvesting in the state. The regulations shall include guidelines to facilitate the identification of ancient forests, associated forests, and critical habitat in all forest districts and in all plans. However, the rules established by the Board shall not use definitions less stringent than, nor inconsistent with, the statutory definitions in sections 4521.1, 4522.2 and 4522.9.

Section 4570.2. Preservation of Critical Habitat.

(a) The Department of Fish and Game shall review each plan for the harvesting of timber to determine whether the plan proposes timber operations within a critical habitat area, and shall require such mitigation measures or restrictions as the Department of Fish and Game determines to be necessary to preserve such area as viable ecological habitat. If such mitigation measures or restrictions cannot feasibly be met, the plan shall be denied.

(b) For the purposes of this chapter, "critical habitat" shall include, but not be limited to, all of the following:

- (1) Ancient forests.
- (2) Habitat necessary for the continued viability of any dependent species.
- (3) Habitat necessary for the continued viability of any endangered or threatened species, or species of special concern.
- (4) Area within a watercourse protection zone.

Section 4570.3. Limitation on Amendment. No plan for the harvesting of timber which includes an ancient forest or associated forest shall be amended to alter such identification, unless the Secretary of the Resources Agency finds, in response to an application to amend the plan, that conditions on the ground have been so altered by natural disaster that to continue to identify the area as ancient forest or associated forest would not further the intent of this article.

Section 4570.4. Uneven-Aged Management; Harvesting Method. Uneven-aged management shall be the only silvicultural system permitted in any ancient forest or associated forest. Widely dispersed selection shall be the only harvesting method allowed in any plan for the harvesting of timber for areas which are ancient forest or associated forest. Upon completion of timber operations in any ancient forest or associated forest, no new timber operations may commence in the same location for forty (40) years.

Section 4570.5. Post-Harvest Standards. At the conclusion of timber operations in an ancient forest or associated forest, the following standards shall be met:

(a) The timberland which was ancient forest prior to timber operations must continue to exhibit the characteristics of an ancient forest, as defined pursuant to section 4521.1 of this code.

(b) The timberland which was associated forest prior to timber operations must continue to exhibit the characteristics of associated forest, as defined pursuant to section 4521.1 of this code.

(c) At least eighty percent (80%) of the acreage covered by the overstory canopy layer on the effective date of this Act shall remain covered by overstory canopy in an undamaged condition.

(d) A timber stand representative of the species mix and age distribution which existed prior to timber operations shall be retained undamaged in all canopy layers. The remaining stand shall contain representatives of the best phenotypes which existed prior to timber operations, which shall be windfirm, undamaged and, to the greatest extent possible, capable of seed production.

(e) Upon the completion of timber operations, not less than eighty percent (80%) of the volume of downed logs, non-merchantable live trees, and hard and soft snags which were present prior to timber operations shall remain.

In enforcing this section the policy shall be to provide for no net loss, as well as a gradual increase, in those areas which are ancient forests and associated forests, and to gradually upgrade associated forests to ancient forests.

Section 4570.6. Harvesting Offsets. Notwithstanding any other provision of this chapter, the department may, with respect to lands other than an ancient forest or associated forest, grant a variance from the sustainable forestry standards established by the board to any owner of an ancient forest which the Board of Forestry finds, after a public hearing, will be unable to achieve a reasonable beneficial use of the person's total timberland holdings as a result of the application of the restrictions imposed by this article on timber operations in critical habitat. Such a variance may allow variation from the requirements established for sustainable forestry only to the extent necessary to permit a reasonable beneficial use of the person's timberland, and in no event may permit a variance of more than fifteen percent (15%) from any of the standards set forth in rules adopted for sustainable forestry pursuant to this chapter. In the event such a variance is allowed, appropriate additional stocking requirements and mitigations shall be required so as to prevent the long term depletion of those timberlands to which the variance applies.

Section 4570.7. Rules Encouraging Ancient Forest Regeneration. The Board of Forestry shall develop management rules and policies, based on best available scientific evidence, to ensure that within the next 150 years (or as soon as biologically possible) no less than twenty percent (20%) of the acreage within any forest watershed area planning unit shall become ancient forests or associated forests.

E. Forest Restoration

Section Twenty-two. Revenue and Taxation Code section 38115 is hereby amended to read as follows:

Section 38115. Harvesting of timber. A timber yield tax is hereby imposed on every timber owner who harvests his or her timber or causes it to be harvested [~~on or after April 1, 1977~~], and on every timber owner of felled or downed timber who acquires title to such felled or downed timber in this state from an exempt person or agency described in Section 38104 [~~on or after that date~~], and on every person who, without authorization, intentionally or unintentionally harvests or causes to be harvested timber

owned by another, at the rate of ~~[6]~~ 9 percent of the total immediate harvest value of that timber or at such other rate as may be fixed pursuant to Chapter 3 (commencing with Section 38202) of this part. The immediate harvest value shall be determined as of the scaling date.

Section Twenty-three. Revenue and Taxation Code section 38904 is hereby repealed.

Section Twenty-four. Section 38904 is hereby added to the Revenue and Taxation Code to read as follows:

Section 38904. Appropriations from Timber Tax Fund. The money in the Timber Tax Fund is appropriated as follows:

(a) To reimburse the General Fund for funds advanced for costs incurred by the board in administration of this part in amounts identified and approved in each fiscal year as approved in the Budget Bill. One-half of this amount shall be reimbursed to the General Fund on November 30, and the remaining one-half on May 31. In the event that not all funds approved in the Budget Bill are actually expended by the board, then in the succeeding fiscal year, the amount to be reimbursed to the General Fund on November 30 shall be reduced by an amount equal to the unexpended appropriation of the preceding fiscal year.

(b) To reimburse the General Fund for funds advanced for costs incurred by the State Forester in administration of Section 4582.8 of the Public Resources Code in amounts identified and approved in each fiscal year as authorized in the Budget Bill.

(c) Five-eighteenths (5/18ths) of the total timber yield tax collected shall be paid as follows:

(i) Until December 31, 1994, to the State Water Resources Control Board, in order to reimburse that agency for costs incurred in the development and implementation of its watercourse classification program, including necessary monitoring and field studies, pursuant to Water Code section 13274;

(ii) After January 1, 1995, to the Department of Fish and Game's Habitat Conservation Fund, to be used by that Department to fund projects whose primary purpose is the restoration or enhancement of aquatic habitat for spawning and rearing of anadromous salmonids, trout resources and other

fish habitat, or for the restoration or enhancement of critical habitat (as defined in Public Resources Code section 4522.2), within those counties from which timber is harvested in amounts as derived from timber operations in each county.

The Department of Fish and Game shall contract for these projects in each county with small businesses in that county conducting forest and watercourse restoration, rehabilitation or reforestation projects, and which will give hiring preference to workers residing in that county who were formerly employed in the timber industry but who have been laid off or severed from that employment within the last 36 months. Companies engaged in the commercial business of harvesting timber, or companies controlled by them, shall not be eligible for any of these funds.

As used above, the term "company engaged in the commercial business of harvesting timber" means a company which is an owner of land or timber rights on more than 2,500 acres and which, as a timberland owner, controls, directs or contracts for the harvesting of timber on those lands on an ongoing commercial basis. It does not include that primary company's subcontractors providing falling, yarding, hauling or other services to that primary company on an independent contractor basis.

As used in this section, a company is "controlled by" another if that other company owns 10% or more of the equity of the former, and a "small business" means any business enterprise or nonprofit organization which employs 50 or fewer persons on a full-time equivalent basis.

(d) One-eighteenth (1/18th) of the total timber yield tax collected shall be transmitted to the State Controller to allocate to county treasurers in the same proportion that the balance to be transmitted was generated from each county, as certified by the State Board of Equalization, to reimburse the county for its costs in implementing Government Code sections 65302(h) and 65601 through 65611, inclusive.

(e) To pay refunds authorized by this part of taxes imposed pursuant to Section 38115 and interest, penalties, and other amounts paid or collected pursuant to this part and deposited in the Timber Tax Fund.

(f) The balance remaining after deductions in subsections (a), (b), (c), (d), (e) and (f) above, to the Controller to allocate pursuant to Section 38905 and 38905.1.

F. Ban on Log Exports

Section Twenty-five. Intent. The intent of these provisions is to limit the export of raw unfinished logs from the timberlands of this state. In this way, commercial pressures to overcut timberlands, and thereby deplete the watershed resources and habitat of the forests of this state, will be reduced, and timber dependent communities will also be aided by slowing the drain of jobs and capital away from those communities.

Section Twenty-six. Section 4650.1 of the Public Resources Code is hereby amended to read as follows:

Section 4650.1. Restrictions of Export.

(a) Notwithstanding any other provision of law, timber from state forests shall not be sold to any primary manufacturer, or to any person for resale to a primary manufacturer, who ~~[makes]~~ does either of the following:

(1) ~~[use of such]~~ Uses that timber at any plant not located within the United States, unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches.

(2) Sells any logs harvested from private timberlands in California for foreign export or processes those logs at manufacturing facilities located outside the United States.

(b) Any purchaser of timber from state forests who makes use of ~~[such]~~ timber in violation of this section ~~[shall be]~~ is prohibited from purchasing state forest timber for a period of five years and may have his or her license suspended for a period of up to six months.

(c) The department ~~[may]~~ shall adopt appropriate regulations to prevent the substitution of timber from state forests for timber exported from private timberlands.

Section Twenty-seven. Section 10295.5 is hereby added to the Public Resources Code to read as follows:

Section 10295.5. Restriction on Purchase from Log Exporters.

(a) The State of California shall not purchase lumber or other forest products from any person or corporation, or from any manufacturer who obtains timber or other forest products from any person or corporation, which sells logs harvested within the state for foreign export or processes timber harvested within the state at facilities located outside the United States.

(b) The State of California shall not enter into any contract, the performance of which requires any contractor thereto to purchase lumber or other forest products, unless such contract provides that such contractor shall not purchase lumber or other forest products from any person or corporation, or from any manufacturer, who obtains timber or other forest products from any person or corporation which sells logs harvested within the state for foreign export, or who processes timber harvested within the state at facilities located outside of the United States.

(c) The Department of General Services shall revise its procedures and procurement specifications for state purchases of lumber and other forest products to ensure compliance with this section.

G. Other Provisions

Section Twenty-eight. Section 4582.71 is hereby added to the Public Resources Code to read as follows:

Section 4582.71. Preapproval Site Inspections. Any employee or agent of any state agency participating in the plan review may inspect the area in which timber operations are to be conducted. If the person submitting the plan refuses to allow any employee or agent of any such state agency reasonable access to the property and use of equipment necessary to make such an inspection (including the taking of samples and specimens for baseline comparison) the plan shall be denied. Employees and agents of any such state agency may conduct studies or surveys (including baseline studies) in order to exercise their authority under this chapter using any relevant equipment.

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Section Twenty-nine. Section 4518 is hereby added to the Public Resources Code to read as follows:

Section 4518. Determinations. Whenever any agency is required by this chapter to reach or make a determination, that determination shall be made on the basis of the best scientific information and methodology available.

Section Thirty. Section 4582.75 of the Public Resources Code is hereby repealed.

Section Thirty-one. Section 4582.75 of the Public Resources Code is hereby added to read as follows:

Section 4582.75. Application of CEQA; Assessment of Cumulative Impacts.

(a) Timber harvesting conducted pursuant to the Z'Berg-Nejedly Forest Practice Act shall be deemed a project subject to the California Environmental Quality Act (commencing section 21000 of this code, also known as "CEQA"), except that to the extent this program is certified under Public Resources Code section 21080.5, no environmental impact report shall be required for individual timber harvesting plans unless so required by the department, the Department of Fish and Game or the Regional Water Quality Control Board in order to assess the environmental effects of the plan.

(b) Regardless of whether an environmental impact review is required for a plan or not, the department shall assess the contribution to cumulative impacts of timber harvest plans subject to its review. In considering cumulative environmental impacts, the department shall apply the standards and criteria set forth in CEQA and those provisions of Title 14 of the California Code of Regulations applicable to analysis of cumulative impacts under CEQA. In addition, in considering cumulative impacts the department shall also consider, without limitation, all past, present and reasonably anticipated future timber operations (including those anticipated pursuant to any long range management plans, however titled or designated), as well as all other foreseeable activities, within

all the watershed areas (as defined by section 4564.2) in which any acreage covered by the plan under review is situated. The Board of Forestry shall not, by regulation, procedure or otherwise, abrogate or diminish the standards and criteria for determining and assessing cumulative impacts contained in CEQA and Title 14 of the California Code of Regulations applicable to timber operations.

(c) The board, with the concurrence of the Department of Fish and Game and the State Water Resources Control Board, shall develop new rules and standards for data collection (including the collection of baseline data prior to harvesting), for assessing cumulative environmental impacts in compliance with this section.

(d) No plan for the harvesting of timber shall be approved unless it is in compliance with all applicable laws. Operations pursuant to a plan for harvesting of timber shall not commence until thirty (30) days after plan approval by the department. Nothing in this section shall be construed as limiting the application of CEQA to all plans for the harvesting of timber, nor as prohibiting or limiting the board's ability to impose additional requirements or standards that are in addition to, or more stringent than, those contained in CEQA.

(e) The board, with the concurrence of the Department of Fish and Game and the State Water Resources Control Board, shall develop or amend its existing rules and regulations so as to fully implement this section by January 1, 1994.

Section Thirty-two. Section 21080.5(c) of the Public Resources Code is hereby amended to read as follows:

Section 21080.5(c) Except for timber harvesting activities conducted pursuant to the Z'Berg-Nejedly Forest Practice Act (commencing Section 4511 of this code) for which an environmental impact report has been required by either the California Department of Forestry and Fire Protection, the Department of Fish and Game or a Regional Water Quality Control Board pursuant to section 4582.75(a), a [A] regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) and Section 21167.

Section Thirty-three. Subsection 21080.5(d)(4) is hereby added to Section 21080.5 of the Public Resources Code to read as follows:

Subsection 21080.5(d)(4):

(4) The administering agency has prepared a long-range management plan for the regulatory program, which shall be updated every five (5) years, providing for long term conservation of the resources managed under that regulatory program, and which addresses all the areas of concern set forth in section 21100, as well as the following:

(i) An assessment of the overall past, present and probable future cumulative impacts of the regulatory program on the following:

- (A) water quality and quantity;
- (B) soil fertility and erosion;
- (C) fish and wildlife;
- (D) endangered, threatened or candidate species listed under either the California Endangered Species Act (commencing section 2050 of the Fish and Game Code) or the Federal Endangered Species Act (16 U.S.C. 1531 et. seq.);
- (E) the impact of the regulatory program on species listed by the Department of Fish and Game as "special animals" or "special plants" in the California Natural Diversity Data Base.

(ii) An assessment of the sustainability of the resource over time, and steps being taken by the regulatory agency to assure that the resource will not be depleted over time.

(iii) An assessment, based on best available scientific evidence, of those resource management practices which are utilized by the industry regulated (as for instance, with respect to the timber industry, silvicultural methods, harvesting methods and stocking standards) and the steps that are being taken by the regulatory agency to assure that best management practices, using best available methodologies, are being utilized to assure long term sustainability of the resource over time as well as to minimize significant adverse environmental effects.

Section Thirty-four. Section 4621.2(3) of the Public Resources Code is hereby amended to read as follows:

Section 4621.2(3). The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved, and the conversion would not have adverse significant effects on endangered habitat (as defined by Public Resources Code section 4742), water quality, or otherwise have other adverse significant effects on the environment as defined under the California Environmental Quality Act (CEQA) commencing section 21000 of the Public Resources Code, and the regulations and case law interpreting CEQA.

Section Thirty-five. Section 4582.7 of the Public Resources Code is hereby repealed.

Section Thirty-six. Section 4582.7 is hereby added to the Public Resources Code to read as follows:

Section 4582.7. Review of Plans. The director shall have 60 days from the date of filing, or a longer period mutually agreed upon by the director and the person submitting the timber harvest plan, to review the plan and take public comments, and to determine if the plan is in conformance with all legal requirements, with any applicable longer term resource management plan and with the rules under the Sustainable Forestry Program. The director may, if necessary, extend that period of review an additional 60 days if the plan itself, or the issues raised in the plan, are complex, or if there is substantial public interest in the plan, or for any additional period of time necessary to complete an environmental impact report if one is required under section 4582.75(a). In any event, the period of time during which public comment will be taken shall not be less than 60 days. If the director determines that the plan is not in conformance with all legal requirements, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board,

and timber operations shall not commence. A person to whom a plan is returned may, within 10 days from the receipt of the plan, request of the board a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if it is in conformance with all legal requirements. Board action shall occur within 45 days from the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal. If the plan is not approved on appeal to the board, the plan may be found to be in conformance by the director within 20 days of the board action, provided the plan is brought into full conformance with all legal requirements. Final approval of the plan by the director or the board shall be accompanied by a response to significant environmental points raised during the review process. No timber operations of any kind, including but not limited to road construction, may commence prior to thirty (30) days after final approval of the plan by the director or the board.

Section Thirty-seven. Section 4515.5 is hereby added to the Public Resources Code to read as follows:

Section 4515.5. Timber Harvest Plan Fees. Within six months of the effective date of this Act, the Department of Forestry and Fire Protection, the Board of Forestry, the Department of Fish and Game, and the Regional Water Quality Control Boards shall adopt fee schedules to ensure that their reasonable program costs for developing regulations, maintaining data, monitoring and enforcing compliance with this chapter, reviewing plans for the harvesting of timber, preparing environmental impact reports, and taking any other action pertaining to the review of a plan for the harvesting of timber are fully reimbursed by the submitters of such plans. Every person submitting a plan for the harvesting of timber shall pay the fees imposed by said schedules to such agencies. Fees shall increase in proportion both to the board foot timber volume proposed to be removed and to the acreage of land upon which timber is proposed to be harvested.

Section Thirty-eight. Section 45644 is hereby added to the Government Code to read as follows:

Section 45644. Tree Protection and Replanting Ordinances. By January 1, 1995, every county and incorporated city of this state shall adopt a tree protection ordinance requiring at least the following:

(a) Identification of unique or biologically important heritage trees and groves of trees (including native species of oak), and measures for their permanent protection and eventual replacement of their natural attrition.

(b) Measures to mitigate destruction of existing native tree species (including native species of oak) during construction or development of land, including measures to incorporate existing native trees as much as feasible into developments, and to replace trees removed with replantings of similar native species elsewhere.

(c) A tree planting program of native species to beautify urban areas and streets, to protect riparian areas within the urban area, to help reduce global warming, to increase the number of shade trees, and for use and enjoyment by wildlife and the public. This program shall also include tree selection and location criteria to maximize shade and conservation of energy.

To as great an extent as feasible, funding of these activities shall be accomplished without resort to additional taxes.

TITLE III: OAK WOODLANDS

Section Thirty-nine. Division 4.5 is hereby added to the Public Resources Code to read as follows:

Article 1. Protection of Native Oak Woodlands

Section 4971. Intent. It is the intent of this article to protect the remaining California oak woodlands habitat, to restore and recover additional oak woodlands habitat over time, and to establish a policy of "no net loss" of oak woodlands habitat. However, nothing in this division shall prevent the Legislature, or any state or local agency, from providing additional or more stringent protections for oak woodlands habitat than are provided herein.

Section 4972. Definitions. As used in this chapter, the following terms shall have these meanings:

(a) "Basal area" means the cross-sectional area at breast height (a point 4.5 feet (1.37 meters) above the average ground level) of the bole of a tree species.

(b) "Canopy" means the ground cover provided by trees or shrubs.

(c) "Chaparral" means a thicket of shrubs and small trees as more specifically defined by the Department of Fish and Game.

(d) "dbh" means diameter at breast height, being a point 4.5 feet (1.37 meters) above the average ground level.

(e) "Dominant species," when referring to trees, means that tree species which makes up 15% or more of the total live trees in any given area with at least six specimens of that species per acre. There may be more than one species which meets this definition, in which case those species are said to be "co-dominant."

(f) "Ecological corridor" means as defined in section 4742 of this code.

(g) "Feasible" means the same as in section 21061.1 of the Public Resources Code. Additional expense does not in itself create infeasibility.

(h) "Grassland" means extended open areas of grass or grass-like vegetation.

(i) "Oak" means a native tree or shrub of the Genus Quercus.

(j) "Oak woodlands" means areas in which some native California oak of the Genus Quercus is the dominant species of tree or shrub, combining the woodland, woodland-grassland, and woodland-chaparral vegetation types. The Department of Fish and Game shall more precisely define and characterize oak woodlands for purposes of identification. The definition used by the Department of Fish and Game Natural Diversity Data Base shall be the definitive definition.

(k) "Significant effect on the environment" means as defined in section 21068 of the Public Resources Code.

Section 4973. Inventory and Mapping. By January 1, 1995, the Resources Agency, through its appropriate departments, shall inventory, classify by dominant oak species, and map the remaining oak woodlands of this state. The Resources Agency shall also assess the ecological health of those oak woodlands, including an inventory of those species dependent upon those oak woodlands for food, shelter or habitat. The Resources Agency shall report to the Governor and the Legislature its findings by February 1, 1995, including its recommendations for measures to protect and preserve oak woodlands from further destruction or environmental degradation. This assessment shall be updated and published no less than every five years thereafter.

Article 2. Specific Protections.

Section 4974. Guidelines for Protection.

(a) On or before June 1, 1995, the Department of Fish and Game, after consultation with other departments of the Resources Agency and other appropriate state agencies, shall develop and approve guidelines and regulations to promote and ensure the health and ecological sustainability of oak woodland habitat, so as to maintain a healthy population mix of native wildlife species dependent upon oak woodlands habitat as well as to minimize soil erosion. These guidelines and regulations shall be used as standards by the Department of Fish and Game and other state and local agencies in: (1) approving any Watershed and

Habitat Element, or any amendment thereto, required to be approved by localities as part of their general plans pursuant to Government Code 65302(h); (2) in reviewing and approving projects subject to the California Environmental Quality Act (CEQA) (commencing section 21000 of this code); and (3) making recommendations for mitigations for projects subject to CEQA, including those also subject to the Z'Berg-Nejedly Forest Practice Act (commencing section 4511 of this code). The Department of Fish and Game shall review and update these guidelines periodically using best available scientific information and methodology, the oak woodland habitat assessment and the recommendations of the Resource Agency.

(b) The guidelines and regulations of the Department of Fish and Game shall include:

- (1) minimum requirements for retention of basal area/canopy cover calculated as percentage remaining;
- (2) measures to retain and maintain species diversity of flora and fauna within oak woodlands habitat;
- (3) measures to retain and maintain a diverse mixture of age and size classes of native oaks within oak woodlands habitat;
- (4) measures to retain downed logs and snags;
- (5) provisions for ongoing study of the relationship between native perennial and introduced annual grasses, and the effect of both these grass types on oak regeneration;
- (6) provisions for ongoing study of the impact of grazing on regeneration of native oak species and means to mitigate any adverse impacts;
- (7) measures to encourage regeneration of oaks within areas of the state which are now, or once were, oak woodlands;
- (8) measures to prevent and reverse habitat fragmentation and to promote the creation of ecological corridors. When feasible, priority shall be given to the creation and protection of ecological corridors between fragmented habitat.

Guidelines applicable to the removal of any *Quercus lobata*, *Quercus Douglasii* or *Quercus Engelmannii* tree, or the destruction of habitat in which these trees customarily live, shall require special mitigations to ensure and promote healthy regeneration of those species.

Section 4975. No Net Loss Policy. It shall be the policy of this state that there be no further net loss of ecologically viable oak woodlands habitat. As a condition of the approval of any permits or licenses for a project, state and local agencies may require that oak woodlands habitat be preserved through set-asides, dedications, restoration, mitigation fees specifically earmarked for oak woodlands restoration, and conservation or open space easements in perpetuity.

Section 4976. Replacement of Trees Removed. In addition to other mitigations, state and local agencies shall require retention of the largest number of native California oak trees of the oldest age and best health feasible. The removal or destruction of any native oak tree shall, to the extent feasible, be avoided. If avoidance is impossible, the loss of trees cut shall be compensated by requiring planting of replacement trees of the same species either on site, provided anticipated use of the site is compatible with retention of these trees, or otherwise elsewhere within the same watershed in areas which are, or could become, oak woodlands.

Such replacement plantings shall be in a ratio as follows: for each inch dbh of the trees removed, one inch dbh of trunk shall be planted, seedlings and saplings under one inch dbh counting as one inch. For example, if a native oak tree of 18 inches dbh is removed, either 18 one inch dbh or smaller saplings may be replanted, or three trees of 6 inch dbh, or any other combination of trees which amount to a cumulative total of trunk diameters of 18 inches dbh, all of the same species as the tree removed. These oak trees shall be planted and actively maintained in a healthy state until at least 75% have reached a height of at least six (6) feet tall. To the extent possible, the original mix of species shall be maintained, planted from local stock.

"Oak tree" for purposes of the protections of this section means any species of oak that typically grows to greater than six feet in height at maturity. This will exclude such species as Huckleberry Oak (*Q. vaccinifolia*), Scrub Oak (*Q. dumosa*), and Sadler Oak (*Q. Sadleriana*) which are typically small shrub-like plants at maturity.

Section 4977. Application to Timber Operations. The protections of this article shall apply to timber harvesting operations conducted pursuant to the Z'Berg-Nejedly Forest Practice Act (commencing section 4511 of this code) on lands where the dominant species is now any species of native California oak, and which historically have been oak woodlands, but shall not apply to: (a) cutover lands on which oak trees are becoming established faster than the originally dominant native conifer tree species; (b) any timber harvesting operation primarily for the purpose of restocking an area with native conifer species historically dominant in that region; (c) timber harvesting pursuant to an emergency notice granted under section 4592 of this code; (d) any other situation which has been specifically exempted by the Department of Fish and Game pursuant to its regulations or guidelines.

Section 4978. Exceptions and Exemptions. The protections of this division are not intended to prohibit or restrict the following activities:

(a) improvements to, or maintenance of, existing public roads and railways;

(b) fire protection (including creating fire safe areas by clearing around dwellings) and fire suppression activities, or other emergency activities to protect life and property from imminent destruction.

Section 4979. Special Rules for Control of Overgrazing. It is not the intention of this division to place unreasonable restrictions on the grazing of livestock on oak woodlands. However, overgrazing of livestock in these habitats does pose a serious threat to the regeneration and long term viability of oak woodlands. Therefore, the Department of Fish and Game shall make reasonable regulations (pursuant to section 4974) for the control of overgrazing in or near oak woodlands habitat, and may require a permit for the grazing of livestock in those areas. The Department of Fish and Game may also provide technical assistance to ranchers whose livestock may adversely affect designated oak woodlands areas so as to help them mitigate any adverse effects, including providing a portion of the costs of these mitigations to affected ranchers.

Article 3: Enforcement

Section 4982. Enforcement; Writ of Mandate.

(a) No permit, license or authorization shall be given by any local government or lead agency for any private project unless that project is in compliance and conformity with the provisions of this article, incorporating all feasible mitigations under guidelines and regulations adopted by the Department of Fish and Game pursuant to section 4974 for the protection of native oak woodlands. If a court finds that an action of a city, county, or city and county which is required to be consistent with this article does not comply with its terms, the court shall order the city, county, or city and county to bring its actions into compliance within 60 days. However, the court shall retain jurisdiction to enforce compliance with its decisions.

(b) Any person may bring an action by way of writ of mandate under section 1085 of the Code of Civil Procedure to enforce the provisions and intent of this article or to bring a local government into compliance with this article. The court's review of compliance with the provisions of this article shall extend to whether the action substantially complies with the requirements and intent of this article. Notwithstanding any other provision of law, particularly section 529 of the Code of Civil Procedure, the plaintiff in such an action shall not be compelled to post more than a nominal bond as a condition of obtaining injunctive relief.

(c) In addition to any other penalties provided by law, upon the petition of any person or on its own motion, the court may seize and confiscate the proceeds from the sale of illegally harvested oak trees. If illegally harvested oak trees have not yet been sold, the court may order

them confiscated and sold. The proceeds of the sale, and the proceeds of any fines or penalties levied pursuant to this article, shall be deposited into a special account in the Fish and Game Preservation Fund, to be used by the Department of Fish and Game to fund oak woodlands study, restoration and replanting projects throughout the state, and to reimburse itself for the costs of enforcing this division.

(d) Upon motion, a court shall award attorney's fees and reasonable litigation expenses to a prevailing party in any action brought pursuant to this section, if such party meets the requirements of section 1021.5 of the Code of Civil Procedure. However, nothing in this division shall be construed as limiting the court's inherent power to order a party, the party's attorney, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions, or tactics that are frivolous or solely intended to cause unnecessary delay, pursuant to Code of Civil Procedure section 128.5.

Section 4983. No preemption by Forest Practice Act. Nothing in this article is intended to contradict any provision of the Z'berg-Nejedly Forest Practice Act (commencing section 4511 of this code). Any regulatory scheme set forth in this article is intended to complement and be in addition to the provisions set forth in the Z'Berg-Nejedly Forest Practice Act, and neither shall be deemed to preempt the other to any degree.

TITLE FOUR: PROTECTION OF CRITICAL HABITAT

A. County General Plan and Zoning Provisions

Section Forty. Government Code section 65302 is hereby amended to add subsection (h) to read as follows:

65302(h). A Watershed and Habitat Element as provided in Article 10.9 (commencing with section 65601).

Section Forty-one. Chapter 3 of Division 1 of Title 7 of the Government Code is hereby amended to add Article 10.9 (commencing with section 65601 and concluding with section 65610) to read as follows:

ARTICLE 10.9

Watershed and Habitat Element

Section 65601. Findings and Declarations. The People of the State of California find and declare:

(a) Maintaining the amount and quality of California's water resources is essential to the well being of the People and wildlife of this state.

(b) Poorly planned development throughout the state has inflicted considerable damage to critical natural plant and animal habitat in the watersheds of this state. This damage has resulted in a severe deterioration in both the quantity and quality of California's precious water resources and made many plant and animal species more vulnerable to drought and other natural disasters.

(c) To prevent additional damage to California's water and habitat resources, local governments must identify, protect and restore their watersheds to the extent feasible. Recognizing that watersheds exist in all areas of the state, including urban regions, the needs of each local community must be addressed using the local land use planning process and appropriate local zoning ordinances.

Section 65602. Intent.

(a) It is the intent of the People of California that localities identify, protect and, to the extent feasible, restore watershed habitat needed to protect water quality and flow within their jurisdictions.

(b) It is the intent of the People of California that localities incorporate the protection and restoration of watershed habitat into their local plans governing land use.

(c) It is the intent of the People of California that localities make the protection and restoration of their watersheds, and the plant and animal habitat which exists within those watersheds, a high priority and an integral part of their general plans.

Section 65603. Definitions. Unless the context requires otherwise, the definitions used in this section shall govern construction of this article.

(a) "Ancient forest" and "associated forest" means as defined in section 4521.1 of the Public Resources Code.

(b) "Best available technology" means those procedures which can achieve the maximum feasible reduction of environmental harm, taking into account energy, environmental and economic impacts, and social costs, and which is achievable through the application of known and available production processes, methods, systems and techniques.

(c) "Best management practices" means those management or control practices and strategies which are feasible, and which will result in the maximum environmental benefit in the shortest period of time as well as maximum over all and long term environmental benefits with the minimum of adverse significant effects on the environment.

(d) "Community," "locality," or "local government" means a city, city and county, or county.

(e) "Department" means the Department of Fish and Game.

(f) "Endangered habitat" means:

(i) animal and plant habitat biologically necessary for any of the following reasons:

(i) to provide necessary habitat for the protection, recovery and long term survival of endangered or threatened species listed, and also species which are candidate species for listing, under the Federal Endangered Species Act (16 U.S.C. 1531 et. seq.);

(ii) to provide necessary habitat for the protection, recovery and long term survival of endangered, threatened or rare species listed, and also species which are candidate species for listing, under the California Endangered Species Act (Fish and Game Code section 2050 et. seq.);

(iii) to provide necessary habitat for the protection, enhancement and long term survival of any species listed as "special animals" or "special plants" in the California Department of Fish and Game's Natural Diversity Data Base.

(2) riparian and aquatic habitat;

(3) wetlands as defined in section 4742 of the Public Resources Code;

(4) ancient forests and associated forests;

(5) oak woodlands;

(6) other animal and plant habitat necessary for the protection, enhancement and long term survival of environmentally sensitive species otherwise likely to become threatened, endangered or extinct, and which is identified as "endangered habitat" pursuant to regulations and procedures adopted by the Department of Fish and Game.

(g) "Feasible" means feasible as defined in section 21061.1 of the Public Resources Code. Additional economic cost does not in itself create infeasibility.

(h) "Full ecological function" means capable of providing biologically sufficient sustenance and habitat for those species originally native to that region in order to perpetuate those species as an ecological community over time. "Community" in this regard means an association of living organisms having mutual relationship among themselves and to their environment, and thus functioning as an ecological unit in the natural state. Whether a system has been restored to full ecological function shall be determined on the basis of best available scientific information.

(i) "Project" means as defined in section 21065 of the Public Resources Code.

(j) "Oak woodlands" means as defined in section 4972 of the Public Resources Code.

(k) "Riparian habitat" and "aquatic habitat" mean as defined in section 11001 of the Public Resources Code. Riparian habitat can also include portions of, but is not limited to, ancient forest and oak woodlands.

(l) "Significant effect on the environment" means as defined in section 21068 of the Public Resources Code.

(m) "Watercourse" means any well-defined channel with distinguishable bed and bank showing evidence of having contained flowing water as indicated by deposits of rock, sand, gravel or soil.

(n) "Watershed" means the geographical region or area contributing to the water supply of a stream, river or lake, i.e., the drainage area of surface waters feeding a watercourse.

(o) "Watershed and Habitat Element" or "Element" means the Watershed and Habitat Element of the community's general plan, as required pursuant to this article and subdivision (h) of section 65302.

(p) "Watershed and Habitat Protection Zone", means an area that has been identified as a biologically or hydrologically significant area for the protection and conservation of watershed or endangered habitat.

(q) "Wetlands" means a region that is periodically, seasonally, or continuously submerged or which has high soil moisture, which may have both aquatic and riparian components, and which is maintained by transported water supplies significantly in excess of those available through local precipitation. This definition includes "wetlands" as defined in Public Resources Code 5902(1). Biological and hydrological characteristics of wetlands shall be more specifically identified by the Department of Fish and Game.

Section 65604. Protection and Restoration Plan. The Watershed and Habitat Element shall include a comprehensive plan to protect and (to the extent feasible) restore both watershed areas and endangered habitat areas to full ecological function. The purpose of such a protection and restoration plan shall be to prevent further significant adverse effects on these environments, and to provide for the recovery and restoration of those areas that have already been degraded or destroyed.

Section 65605. Watershed and Habitat Protection Zones. The Watershed and Habitat Element shall establish Watershed and Habitat Protection Zones identified and described in the scientific assessment pursuant to section 65608 below. The Watershed and Habitat Protection Zone shall be designated by "WZ" for mapping and identification in the Element. The Watershed and Habitat Element shall further require and provide:

(a) That any project within a Watershed and Habitat Protection Zone that may have a significant effect on the environment must be reviewed and approved by both the Department and the Regional Water Quality Control Board before a permit may be granted by the locality. All feasible mitigations recommended by the Department or Regional Water Quality Control Board shall be adopted as conditions for the permit, license or authorization.

(b) That any project for the construction of a structure or other development within a Watershed and Habitat Protection Zone, or upon any parcel zoned WZ, shall comply with the following:

(1) The parcel shall not be subdivided, unless it can be conclusively demonstrated that the division furthers the intent of the Element and that there is no substantial possibility of significant effects on the environment from such a division.

(2) Residential uses shall be restricted to one single family dwelling, including home office use. Notwithstanding Government Code section 65852.2, no second residential unit shall be permitted.

(3) The minimum setback for any development from a watercourse shall be 200 feet.

(4) Clustering and siting of roads and improvements shall be required so as to minimize adverse significant effects on the environment.

(c) That, except as otherwise limited for Watercourse Protection Zones established by section 4564.3 of the Public Resources Code, or pursuant to rules adopted by the Board of Forestry which are more stringent than these requirements, within any portion of a parcel which lies within a Watershed and Habitat Protection Zone:

(1) Only the selection method of timber harvesting shall be used.

(2) Uneven-aged management shall be the only allowable method of silviculture.

Any local Element or ordinance implementing this provision shall not be deemed to be preempted by the Z'Berg-Nejedly Forest Practice Act, but is in addition to any protections imposed under that Act.

(d) For biologically adequate ecological corridors (as defined in section 4742 of the Public Resources Code) for the migration of species between adjoining watersheds and among areas zoned WZ within the same watershed.

Section 65606. No Net Loss of Endangered Habitat. The Watershed and Habitat Element shall require and provide that there be no net loss of endangered habitat within any watershed.

Section 65607. Mitigation; Best Management Practices Using Best Available Technology. The Watershed and Habitat Element shall require and provide that any project that may have significant effects on the environment which may adversely affect watersheds or endangered habitat shall, to the maximum extent feasible, employ best management practices, using best available technology, in order to mitigate such adverse effects. Mitigations may include, without limitation, off-site mitigations, set-asides, dedications or conservation easements.

Section 65608. Scientific Assessment. The Watershed and Habitat Element shall include a scientific assessment that, among other things, identifies, describes and evaluates the ecological and hydrological condition of all watersheds and all endangered habitat within the locality. The scientific assessment shall also identify and describe all Watershed and Habitat Protection Zones. Such scientific assessment shall be based on the best scientific and biological data available, and shall also identify those areas in which data are not available or which require further research. Such scientific assessment shall be updated as required by generally accepted scientific practices, but no less than every seven (7) years from the date of adoption of the Watershed and Habitat Element. The locality shall consult with the State Department of Fish and Game and other state or federal agencies as necessary in preparing this assessment.

Section 65609. Adoption and Amendments.

(a) A Watershed and Habitat Element shall be adopted as part of a community's general plan on or before July 1, 1995.

(b) At least 90 days prior to adoption of a Watershed and Habitat Element, or at least 45 days prior to the adoption of any amendment thereto, the planning agency shall submit a draft Watershed and Habitat Element or amendment thereto to the Department. The Department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption, or within 45 days of receipt in the case of a draft amendment.

(c) In its written findings, the Department may consult with any public agency, group, or person. The Department shall receive and consider any written comments from any public agency, group, or person regarding the draft Watershed and Habitat Element or amendment thereto. In its written findings, the Department shall determine whether the draft substantially complies with the requirements of this article, and whether it is consistent with the Watershed and Habitat Elements of surrounding local, county and regional plans.

(d) Prior to the adoption of its draft Watershed and Habitat Element or any amendment thereto, the legislative body shall consider the findings made by the Department. If the Department's findings are not available within the time limits set by this section, the legislative body may act without them.

(e) If the Department finds that the draft Element or draft amendment does not substantially comply with the requirements of this article, the legislative body shall take one of the following actions:

(1) Change the draft Element or draft amendment to substantially comply with the requirements of this article, or;

(2) Adopt the draft Element or draft amendment without changes. The legislative body shall then include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft Element or draft amendment substantially complies with the requirements of this article, despite the findings of the Department to the contrary.

(f) Promptly following the adoption of its Watershed and Habitat Element or amendment thereto, the planning agency shall submit a copy to the Department. The Department shall, within 120 days, review the adopted Watershed and Habitat Element, or amendment thereto, and report its findings to the legislative body.

Section 65610. Review and Compliance.

(a) No permit, license or authorization shall be given by any local government for any private project unless that project is in compliance and conformity with the Watershed and Habitat Element of the general plan. If a court finds that an action of a city, county, or city and county which is required to be consistent with its general plan does not comply with its Watershed and Habitat Element, the city, county, or city and county shall bring the action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period to enforce compliance with its decisions.

(b) Any interested person may bring an action by way of writ of mandate under section 1085 of the Code of Civil Procedure to enforce the provisions and intent of this article, or to bring a local government into compliance with this article. The court's review of compliance with the provisions of this article shall extend to whether the Watershed and Habitat Element substantially complies with the requirements of this article. Notwithstanding any other provision of law, particularly section 529 of the Code of Civil Procedure, the plaintiff in such an action shall not be compelled to post more than a nominal bond as a condition of obtaining injunctive relief. Upon motion, a court shall award attorney's fees and reasonable litigation expenses to a prevailing party in any action

brought pursuant to this section, if such party meets the requirements of section 1021.5 of the Code of Civil Procedure. However, nothing in this Article 10.9 shall be construed as limiting the court's inherent power to order a party, the party's attorney, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions, or tactics that are frivolous or solely intended to cause unnecessary delay, pursuant to Code of Civil Procedure section 128.5.

Section 65611. WZ Zoning Ordinance. Within one year of the adoption of the Watershed and Habitat Element pursuant to this article, the legislative body of the local government shall, pursuant to Government Code section 65851 and other law, adopt an ordinance establishing the WZ zoning classification within the locality in order to implement that Element. Such ordinance shall establish appropriate minimum parcel sizes to be maintained (unless the parcel is a prior nonconforming parcel) in order to implement the intent of that Element. That ordinance shall also provide that parcels zoned WZ shall not be subdivided, unless it can be conclusively demonstrated that the division furthers the intent of the Watershed and Habitat Element and that there is no substantial possibility of significant effects on the environment from such a division. WZ zoning may be combined with, or in addition to, existing zoning (including TPZ zoned lands), or parcels may be split zoned. Nothing in this article, however, shall empower or require that parcels currently zoned TPZ pursuant to the Timberland Productivity Act of 1982 (commencing section 51100 of this Code) be rezoned, or that they be released from restrictions imposed by TPZ zoning. Parcels reserved for conservation purposes consistent with the Element shall be deemed as being put to their highest and best use.

B. Endangered Species Protection

Section Forty-two. Article 3.5 of Chapter 1.5 of Division 3 of the Fish and Game Code (commencing with Section 2086) is hereby added to read as follows:

Article 3.5. Application to Local Projects

Section 2086. Application. The provisions of this chapter shall apply to all projects of counties, cities and local governmental agencies. The provisions of this chapter shall also apply to all projects on private land which require a permit, license or authorization from a state, county, city or local governmental agency. Where applicable in this chapter, the word "state" may be interpreted to include county, city and other local governmental agencies. The procedures specified in this chapter for state lead agencies shall, to the extent reasonably required to conform to this chapter, apply to county, city and other local governmental agencies which approve private projects by permit, license or authorization. However, nothing in this article shall prevent or prohibit any county or local agency from providing for additional or more stringent protections than are provided herein, or from defining additional species as locally protected.

Section 2087. Permits for Projects.

(a) No permit, license or authorization shall be given by any state, county, city or local governmental agency for any private project likely to cause a significant population decline of any endangered or threatened species. The granting agency shall consult with the Department of Fish and Game on any proposed project, in accordance with the Department's guidelines, and that Department shall issue a written finding pursuant to section 2090.

(b) If jeopardy is found, the department shall determine and specify reasonable and prudent alternatives consistent with conserving the species. These alternatives shall prevent jeopardy to the species, and the destruction or adverse modification of the habitat essential to maintaining a healthy population of the species. Such alternatives shall become conditions to the granting of the permit, license or authorization by the state, county, city or local governmental agency.

Section Forty-three. Section 2092(c) of the Fish and Game Code is hereby amended to read as follows:

Section 2092(c). A state lead agency shall not approve a project which would likely result in ~~[the extinction]~~ a significant population decline of any endangered species or threatened species. The state lead agency shall base its determination on the best existing scientific information and methodology.

Section Forty-four. Section 2097 of the Fish and Game Code is hereby repealed.

Section Forty-five. Section 2098 of the Fish and Game Code is hereby amended to read as follows:

Section 2098. Source of Funds. The department ~~[shall]~~ may pay the necessary costs of administration of this chapter from the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund, and may use a portion of application review and user fees under section 711.4 of this code, or if those funding sources are inadequate, appropriations from the General Fund as established by the Legislature, to offset its costs under this chapter.

C. Endangered Habitat Protection

Section Forty-six. Article 9 of Chapter 10 of Division 4 (commencing section 4741) is hereby added to the Public Resources Code to read as follows:

Article 9. Protection of Endangered Habitat

Section 4741. Intent. It is the intent of this article to protect the remaining habitat upon which threatened or endangered species now depend, to help restore and recover additional habitat for those species over time, and to establish a policy of "no net loss" of specialized and endangered habitat to prevent other species from becoming threatened, endangered or extinct in the future. However, nothing in this article shall prevent the Legislature or any state or local agency from providing additional or more stringent protections for endangered habitat than are provided herein.

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Section 4742. Definitions. As used in this chapter, the following terms shall have these meanings:

(a) "Ecological corridor" means land connecting geographically separated, protected habitat areas or reserves, and which serves to allow movement and dispersal of animals and plants so they can migrate between protected habitat regions. This definition includes wildlife corridors and greenbelts. To be a biologically effective ecological corridor, such land must be sufficiently wide and sufficiently like the native habitat of the species in the protected area so as to provide protection and sustenance necessary to the species' well-being, as well as the opportunity for easy geographic dispersal.

(b) "Endangered habitat" means:

(1) animal and plant habitat biologically necessary for any of the following reasons:

(i) to provide necessary habitat for the protection, recovery and long term survival of endangered or threatened species listed, and also species which are candidate species for listing, under the Federal Endangered Species Act (16 U.S.C. 1531 et. seq.);

(ii) to provide necessary habitat for the protection, recovery and enhancement of endangered, threatened or rare species listed, and also species which are candidate species for listing, under the California Endangered Species Act (Fish and Game Code section 2050 et. seq.);

(iii) to provide necessary habitat for the protection, enhancement and long term survival of any species listed as "special animals" or "special plants" in the California Department of Fish and Game's Natural Diversity Data Base.

(2) riparian and aquatic habitat (as defined in section 11001 of this code);

(3) wetlands;

(4) ancient forests and associated forests (as defined in section 4521.1 of this code);

(5) oak woodlands (as defined in section 4972 of this code);

(6) animal and plant habitat necessary for the protection, enhancement and long term survival of species otherwise likely to become threatened, endangered or extinct, and which is identified as "endangered habitat" pursuant to regulations and procedures adopted by the Department of Fish and Game.

(c) "Feasible" means the same as in section 21061.1 of the Public Resources Code. Additional expense does not in itself create infeasibility.

(d) "Significant effect on the environment" means as defined in section 21068 of the Public Resources Code.

(e) "Wetlands" means a zone that is periodically, seasonally, or continuously submerged or which has high soil moisture, which may have both aquatic and riparian components, and which is maintained by transported water supplies significantly in excess of those otherwise available through local precipitation. This definition includes "wetlands" as defined in Public Resources Code 5902(1). Biological and hydrological characteristics of wetlands shall be as more specifically identified by the Department of Fish and Game.

Section 4743. Inventory and Mapping. By January 1, 1995, the Resources Agency, through its appropriate departments, shall inventory, classify by dominant species and endangered or threatened species, and map the endangered habitats of this state. The Resources Agency also shall assess the ecological health of those endangered habitats, including an inventory of those species dependent upon those endangered habitats for food, shelter or propagation. The Resources Agency shall report to the Governor and the Legislature its findings by February 1, 1995, including recommendations for measures to protect and preserve endangered habitat from further destruction or environmental degradation. This assessment shall be updated no less than every five years thereafter.

Section 4744. Guidelines for Protection.

(a) On or before March 1, 1995, the Department of Fish and Game shall, after consultation with other departments of the Resources Agency, or other state agencies as appropriate, develop and approve guidelines and regulations to promote and ensure the health and ecological viability of

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endangered habitat so as to maintain a healthy population mix of native plant and animal species dependent upon such habitat. These guidelines and regulations shall be used as standards by the Department of Fish and Game and other state and local agencies in: (1) approving any Watershed and Habitat Element, or any amendment thereto, required to be approved by localities as part of their general plans pursuant to Government Code 65302(h); (2) reviewing and approving projects subject to the California Environmental Quality Act (CEQA) (commencing section 21000 of this Code); and (3) making recommendations for mitigations for projects subject to CEQA, including those subject to the Z'Berg-Nejedly Forest Practice Act (commencing section 4511 of this Code). These Guidelines shall thereafter be reviewed and updated by the Department of Fish and Game at least every seven (7) years, using the endangered habitat assessment and recommendations of the Resources Agency, including updates, and the best available scientific evidence and methodology.

(b) The guidelines and regulations of the Department of Fish and Game shall, among other items, include:

- (1) minimum requirements for habitat retention and connectivity, including movement of wildlife across human transportation corridors;
- (2) measures to provide for protection and restoration of endangered habitat areas;
- (3) measures to retain and maintain species diversity of flora and fauna within endangered habitat;
- (4) measures to retain and maintain a diverse mixture of age and size classes of vegetation within endangered habitat;
- (5) measures to retain animal nesting areas, including downed logs and snags, within endangered habitat areas;
- (6) provision for ongoing study of the relationship between native species and introduced species, and the effect of these introduced species on native species' life cycles and reproduction;
- (7) measures to encourage restoration of endangered or threatened species populations within those areas of the state which are now, or once were, their natural habitat;

(8) measures to prevent and reverse habitat fragmentation and to promote the creation of ecological corridors. When feasible, priority shall be given to the creation and protection of ecological corridors between fragmented habitat areas.

(9) procedures to assess and mitigate the impact of cumulative effects on the ecosystem.

Section 4745. No Net Loss Policy. It shall be the policy of this state that there be no net loss of ecologically viable endangered habitat. As a condition of the approval of any permits or licenses for a project, state and local agencies may require that endangered habitat be preserved through set-asides, dedications, mitigation fees specifically earmarked for endangered habitat restoration, and conservation or open space easements in perpetuity. This policy shall also be implemented by the Department of Fish and Game in recommending mitigations.

Section 4746. Application to Timber Operations. The protections of this article shall apply to timber harvesting operations conducted pursuant to the Z'Berg-Nejedly Forest Practice Act (commencing section 4511 of this code). Any regulatory scheme set forth in the Forest Practice Act is intended to complement, and be in addition to, the provisions set forth in this article and not to preempt this article to any degree.

Section 4747. Enforcement; Writ of Mandate.

(a) No permit, license or authorization shall be given by any state agency or local government for any private project unless that project is in compliance and conformity with the provisions of this article, incorporating all feasible mitigations recommended by the Department of Fish and Game or in its published Guidelines for the protection of endangered habitat. If a court finds that an action of a governmental entity which is required to be consistent with this article does not comply with its terms, the court shall order that governmental entity to bring its actions into compliance within 60 days. The court shall retain jurisdiction for compliance to enforce its decisions.

(b) Any person may bring an action by way of writ of mandate under section 1085 of the Code of Civil Procedure to enforce the provisions and intent of this article, or to bring a governmental entity into compliance with this article. The court's review of compliance with the provisions of this article shall extend to whether the action substantially complies with the requirements and intent of this article. Notwithstanding any other provision of law, particularly section 529 of the Code of Civil Procedure, the plaintiff in such an action shall not be compelled to post more than a nominal bond as a condition of obtaining injunctive relief.

(c) In addition to any other penalties provided by law, upon the petition of any person, or on its own motion, the court may assess a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation or day of violation. The proceeds of any fines, penalties or mitigation fees levied pursuant to this article shall be deposited into a special account in the Fish and Game Preservation Fund, to be used by the Department of Fish and Game to fund enforcement of this article, for scientific study of endangered or threatened species, and candidate species for such classification, and for endangered habitat restoration projects throughout the state.

(d) Upon motion, a court shall award attorney's fees and reasonable litigation expenses to a prevailing party in any action brought pursuant to this section, if such party meets the requirements of section 1021.5 of the Code of Civil Procedure. However, nothing in this Article 3.5 shall be construed as limiting the court's inherent power to order a party, the party's attorney, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions, or tactics that are frivolous or solely intended to cause unnecessary delay, pursuant to Code of Civil Procedure section 128.5.

D. DFG as a Responsible Agency

Section Forty-seven. Section 21104.2 of the Public Resources Code is hereby amended to read as follows:

Section 21104.2. Consultation and findings; effect of projects on threatened or endangered species.

(a) The lead state agency shall consult with, and obtain written findings from, the Department of Fish and Game in preparing an environmental impact report on a project, as to the impact of the project on the continued existence of any endangered species or threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

(b) The Department of Fish and Game, unless otherwise designated as a lead agency, shall be a responsible agency (as defined under Section 21069) for, and shall review and must approve, all projects subject to the California Environmental Quality Act (commencing with Section 21000) which may have a significant environmental effect on any of the following:

- (1) wetlands;
- (2) riparian and aquatic habitat;
- (3) riparian plant and animal communities;
- (4) water appropriations;
- (5) all projects affecting species classed as endangered or threatened under either the Federal Endangered Species Act (16. U.S.C. 1531 et. seq.) or the California Endangered Species Act (Fish and Game Code 2050 et. seq.)
- (6) all projects subject to the Z'Berg - Nejedly Forest Practices Act (commencing at Public Resources Code 4511).

The Department of Finance shall include in the Governor's Budget sufficient moneys to pay the costs of the Department of Fish and Game in exercising its authority as a responsible agency under this section, and for the protection and enhancement of nongame fish and wildlife and their habitat.

TITLE FIVE: EFFECT OF THIS ACT

Section Forty-eight. Liberal Interpretation. The provisions of this Act shall be liberally interpreted in order to give effect to its purposes.

Section Forty-nine. Severability. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Act are entirely severable.

Section Fifty. Law and Regulations. Nothing in this Act shall be interpreted to prohibit the adoption of regulations that are stricter than, or are not in contradiction to, the minimum standards set forth or authorized in this Act. The Board of Forestry and other agencies may adopt rules and regulations as necessary to implement the purposes and intent of this Act.

Section Fifty-one. Prior Approved Law. This measure is not intended to be in conflict with the Forest and Water Protection Act of 1992 (currently scheduled for the June, 1992 ballot). However, this Act is intended to amend the following numbered code sections in the Forest and Water Protection Act of 1992: Public Resources Code sections 4515.5, 4518, 4564, 4564.2, 4564.3, 4570, 4570.2, 4570.3, 4570.4, 4570.5, 4570.6, 4570.7 and 4582.7, and to replace these code sections contained in the Forest and Water Protection Act of 1992 with their equivalent numbered Public Resource Code sections from this Act, should both be approved. If the Forest and Water Protection Act of 1992 is approved by the voters, Public Resources Code 4593.2(d) of this Act shall be of no force and effect since Article 7.5 in which that section appears will already have been repealed. Likewise, if the Forest and Water Protection Act of 1992 is approved by the voters, Public Resources Code sections 4528(f) through 4528(x), inclusive, of that Act shall be repealed and replaced with the definitions contained

in Public Resources Code 4528(f) through 4528(ff), inclusive, in this Act, and also Public Resources Code subsections 4564.05(h) and 4564.05(i) of this Act shall become void and of no force and effect. However, any other provision or section of the Forest and Water Protection Act of 1992 which is not directly amended or voided as stated in this Act shall remain law, if both these measures are approved by a majority of the electorate.

Additionally, in the event any provision of this Act contradicts any provision of existing law on the date of its adoption by the voters, those provisions of existing law which are contradicted by this Act shall be deemed to be amended to the extent necessary to remove such contradiction in favor of this Act.

Section Fifty-two. Consistency Provisions Between this Act and the Forest and Water Protection Act of 1992 in the Event Both are Approved. Should both the Forest and Water Protection Act of 1992 and this Act be approved by the voters, this Act shall also make certain technical amendments in those sections approved as part of the Forest and Water Protection Act of 1992 (hereinafter referred to as the "FWPA") in order to ensure semantic consistency between the two, as follows:

(1) The FWPA reference in Public Resources Code section 4582.73(a) to "sensitive wildlife species as defined in section 4528(q)" shall be amended to read "dependent species as defined in section 4522.9".

(2) Throughout the FWPA, references to "key habitat" shall be amended to read "critical habitat", in particular with respect to (but not limited to) Public Resources Code sections 4582 and 4595.3 of the FWPA.

(3) Throughout the FWPA, reference to "sensitive wildlife species" or "sensitive species" shall be amended to read "dependent species", in particular with respect to (but not limited to) Public Resources Code sections 4582.72, 4582.73 and 4595.3 of the FWPA.

Section Fifty-three. Competing Initiatives on Same Ballot. With the sole exception of the Forest and Water Protection Act of 1992, if removed from the June '92 ballot to this one, this Act is in fact intended to be in conflict with any other measure which appears on the same ballot as this

measure and which, in whole or in part, regulates forestry or forest practices. Except for the Forest and Water Protection Act of 1992, in the event that this measure and another measure or measures which would in whole or in part affect forestry or forest practices appear on the same ballot, and this measure receives a greater number of affirmative votes than said other measure or measures, this measure shall prevail and said other measure or measures shall be void and without effect. In the event that said other measure or measures shall receive a greater number of affirmative votes than this measure, the provisions of this measure shall take effect to the extent permitted by applicable law.

Section Fifty-four. Amendment. This Act may be amended by statute, passed in each house by roll-call vote entered into the journal, three-fourths of the membership concurring, and signed by the Governor, if at least fifteen (15) days before passage in each house the bill in its final form has been distributed to the media; provided, however, that any such amendment shall be valid only insofar as it furthers the purposes and intent of this Act. This Act shall take effect on November 4, 1992.

END OF TEXT

INITIATIVE CHECK LIST

Phone Notification from AG - Date/Time: 10:30 am

Title of Initiative: WATERSHED + FOREST PRACTICES. STATE + LOCAL GOVT

Type of Initiative: CA ☒ S CA and S

Number of Pages: 69 Number of Proponents: 3

Date and Time Initiative will be ready for delivery: 2:00 pm

Initial/Date/Time

1. CM / / Deirdre informs Caren, Cathy, Media and Gabrielle (copy room) the day and time initiative will be ready for delivery.
2. CM / / Deirdre gives check list to Caroline to prepare calendar.
3. CM / / Caroline prepares and proofs calendar and log and returns both to Deirdre.
4. CM 11:30 am Deirdre proofs calendar and log.
5. CM / / Deirdre gives final calendar and log to Cathy.
6. CBM Cathy reviews and has Caren sign. Cathy returns signed calendar to Deirdre.
7. CM / / Deirdre makes copies of initiative calendar for each proponent.
8. CM / / Deirdre attaches copy of Political Reform Act of 1974 Requirements to proponent's copy of initiative calendar.
9. CM / / Deirdre prepares Mail/Freight Request Form. Deirdre hand carries Mail/Freight Request form and initiative calendar for each proponent (ready for mailing) to Service and Supply. Initiative calendar sent on 1/17 (date) to each proponent.

(This must be sent to each proponent same day AG prepares Title & Summary).
10. CM / / Deirdre advises Cathy when initiative calendar is sent to proponent(s).

INITIATIVE CALENDAR CHECK LIST
PAGE

11. CH / /

Deirdre distributes copies of initiative calendar same day AG prepares Title & Summary to :

☒ Tony
☒ Media
☒ Jerry
☒ Cathy

12. C / /

Deirdre distributes copies of initiative calendar to:

☒ All CC/ROV
☒ Political Reform (2 copies)
☒ Elections Staff
☒ Initiative Mailing List
☒ Extra copies for public distribution
☒ Master copy

13. / /

Deirdre advises Cathy of completion of above distribution.

14. / /

Deirdre makes copies of log and distributes as follows:

1. Initiative canvass binder
2. Vi Daniels (Initiative Mailing List)
3. Melodi Andersen (Archives)
4. Oliver Cox
5. Initiative Clipboard
8. Media Office

15. Dec 1-22

Jennifer prepares folder for public distribution.

16. JB / / 1-22

Jennifer prepares index cards for each initiative.

17. CH / /

Deirdre staples Mail/Freight Request form to back of INITIATIVE CHECK LIST.

18. / /

Deirdre returns completed INITIATIVE CHECK LIST to Caren.

19. / /

Caren returns check list to Cathy.

ELECTIONS DIVISION

Mail/Freight Request

Mail submitted to Mail Room:

11/17 1:20
Date Time

Request Mail to be sent no later than:

11/17
Date



1st Class Mail

Charges:

Amount: 2.90

Pieces: 3

Mail room sent requested mail on:

11/17

JSW
Initial (Service and Supply)

(DATE)

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENT(S) (COUNTY CLERK #)

Pursuant to § 3513 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

(TITLE OF INITIATIVE)
(TYPE OF INITIATIVE)

Circulating and Filing Schedule

1. Minimum number of signatures required (384,974) (615,958)
Cal. Const., Art. II, Sec. 8(b).
2. Official Summary Date Fri 1/17
Elec. C., Sec. 3513.
3. Petition Sections:
 - a. First day Proponent can circulate Sections for signatures Fri 1/17
Elec. C., Sec. 3513
 - b. Last day Proponent can circulate and file with the county. All Sections are to be filed
at the same time within each county Mon 4/15
Elec. C., Secs. 3513, 3520(a).
 - c. Last day for county to determine total number of signatures affixed to petition and to
transmit the total to the Secretary of State Thurs 4/25
 - d. Secretary of State determines whether the total number of signatures filed with all county
clerks meets the minimum number of required signatures, and notifies the counties SAT 7/4**
 - e. Last day for county to determine total number of qualified voters who signed the
petition, and to transmit certificate with a blank copy of the petition to the Secretary of
State Fri 8/14

(If the Secretary of State notifies the county to determine the number of qualified voters
who signed the petition on a date other than 4/25, the last day is not later than
the fifteenth working day after the county's receipt of notification.)
Elec. C., Sec. 3520(d), (e).

 - f. If the signature count is more than (423,472) (677,554) or less than (365,726)
(585,161), then the Secretary of State certifies the petition has qualified or failed, and
notifies the counties. If the signature count is between (365,726) (585,161) and
(423,472) (677,554) inclusive, then the Secretary of State notifies the counties using
the random sampling technique to determine the validity of all signatures Mon 8/24**

(If the Proponent(S) file(S) the petition with the county on a date prior to 4/15, the county has five working
days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the
total to the Secretary of State.) Elec. C., Sec. 3520(b).

* Date adjusted for official deadline which falls on (SATURDAY) (SUNDAY) (A HOLIDAY). Elec. C., Sec. 60.

** Date varies based on receipt of county certification.

(TITLE)
(TYPE OF INITIATIVE)
(DATE)
Page 2

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Wed 10/7

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 9/14, the last day is not later than the thirtieth working day after county's receipt of notification.)
Elec. C., Sec. 3521(b), (c).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient. Sun 10/11

4. The Proponent(S) of the above named measure (IS/ARE):

(NAME)
(ADDRESS)
(CITY, STATE AND ZIP CODE)
(PHONE)

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 29770; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 44, 3501, 3507, 3508, 3517, and 3519 for appropriate format and type considerations in printing, typing, and otherwise preparing your initiate petition for circulation and signatures. Please send us a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file in this matter.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

Sincerely,

CAREN DANIELS-MEADE
CHIEF, ELECTIONS DIVISION

Attachment: Political Reform Act of 1974 requirements

DECLARATION OF MAILING

The undersigned Declarant states as follows:

I am over the age of 18 years and not a proponent of the within matter; my place of employment and business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On the date shown below, I mailed a copy or copies of the attached letter to the proponents, by placing a true copy thereof in an envelope addressed to the proponents named below at the addresses indicated, and by sealing and depositing said envelope or envelopes in the United States mail at Sacramento, California, with postage prepaid. There is delivery service by United States mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Date of Mailing: January 17, 1992

RE: Initiative Title and Summary
Subject: WATERSHED AND FOREST PRACTICES. STATE AND
LOCAL GOVERNMENT. INITIATIVE STATUTE.
Our File No. SA 91 RF 0020

Name of Proponents and Addresses:

GLEN H. SPAIN, ESQ.
P.O. Box 205
Comptche, CA 95427

GARY BALL
4901 Mill Creek
Talmage, CA 95481

CECELIA LANMAN
5598 Briceland Rd.
Redway, CA 95560

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sacramento, California, on: January 17, 1992.


LARRY G. CARPENTER
Declarant